



September 29th, 2016

Notice Of Meeting

You are invited to attend a meeting of the Planning Committee to be held on **Wednesday, 5th October 2016** at **10:00 am** in **Boardroom, District Council Offices, Monaghan Row, Newry.** (which is a continuation of the session which was held on Wednesday 28 September 2016)

The Members of the Planning Committee are:

Chair: Councillor W Clarke

Deputy Chair: Councillor J Macauley

| | | |
|-----------------|------------------------------|-----------------------------|
| Members: | Councillor C Casey | Councillor G Craig |
| | Councillor L Devlin | Councillor G Hanna |
| | Councillor V Harte | Councillor M Larkin |
| | Councillor K Loughran | Councillor D McAteer |
| | Councillor M Murnin | Councillor M Ruane |

Agenda

1. **Apologies.**

2. **Declarations of Interest.**

Development Management - Planning Applications for determination

3. **LA07/2016/0716/F - Peter Collins - replacement dwelling - Main Road, Ballymartin - immediately to the east of its junction with Wrack Road. (Case Officer report attached).**

Rec: REFUSAL

- A request for speaking rights has been received from Colin O'Callaghan, Planning Consultant, in support of the application. **(Submission attached).**

[LA07-2016-0716-F Peter Collins.pdf](#)

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[Item 3 - submission of support.pdf](#)

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4. **LA07/2016/0731/0 - Sheena Gribben - site for dwelling and garage on a farm - 60m south east of 47 Castlewellan Road, Hilltown. (Case Officer report attached).**

Rec: REFUSAL

- A request for speaking rights has been received from Sheena Gribben, applicant, in support of the application. **(Submission attached).**

[LA07-2016-0731-O Sheena Gribben.pdf](#)

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[Item 4 - submission of support.pdf](#)

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5. **LA07/2016/0812/0 - George Kelly - dwelling with domestic garage in a gap/infill site - between 54 and 54A Mill Road, Mullaghbawn, Newry. (Case Officer report attached).**

Rec: REFUSAL

- A request for speaking rights has been received from Collins & Collins, Agent, in support of the application. **(Submission attached).**

6. **P/2014/0071/F - Mr John Perry - Change of use to part of commercial (pre-cast concrete works) yard to a waste management facility for the depollution and dismantling of End of Life Vehicles (ELVs) and the sorting and bulking of scrap metal - lands south east of 54 Newcastle Street, Kilkeel. (Case Officer report attached).**

Rec: APPROVAL

- A request for speaking rights has been received from Mr William McMurray objecting to the application. **(Submission attached).**
- A request for speaking rights has been received from Gordon Bell & Son Solicitor on behalf of their client, objecting to the application. **(Submission attached).**
- A request for speaking rights has been received from Michelle McCready objecting to the application. **(Photographs attached).**
- A request for speaking rights has been received from Gemma Jobling, Agent, in support of the application. **(Submission attached).**

P-2014-0071-F John Perry.pdf

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Item 6 - submission of objection (McMurray).pdf

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Item 6 - submission of objection (Bell).pdf

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Item 6 - photos (objection McCready).pdf

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Item 6 - statement of support.pdf

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7. **P/2014/0670/F - Mr Frank King - retention of existing shed and hard standing area for agricultural purposes (revised address and plans) - Lands to the rear of No. 33 Flagstaff Road and associated farm complex (shed approx. 45 metres to the west of existing dwelling with hardstanding extending approx. 50 metres further west and 33 metres further north-west of shed). (Case Officer report attached).**

Rec: REFUSAL

- A request for speaking rights has been received from Mr Stephen Hughes, Agent, in support of the application. **(Submission attached).**

P-2014-0670-F Frank King.pdf

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Item 7- submission of support.pdf

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8. **P/2014/0678/F - Mr Frank King - retention of existing fuel sales business to include existing hard standing area and portacabin - 33a Flagstaff Road, Fathom Lower, Newry. (Case Officer report attached).**

Rec: REFUSAL

- A request for speaking rights has been received from Stephen Hughes, Agent, in support of the application. **(Submission attached).**

P-2014-0678-F Frank King.pdf

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Item 8 - submission of support.pdf

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9. **P/2014/0859/F - Brendan Carr - retention of building for agricultural use - 65m south of 43 Newry Road, Drumilly, Belleek. (Case Officer report attached).**

Rec: REFUSAL

- A request for speaking rights has been received from Colin O'Callaghan, Planning Consultant, in support of the application. **(Submission attached).**

P-2014-0859-F Brendan Carr.pdf

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Item 9 - submission of support.pdf

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10. **P/2015/0095/F - Mrs Geraldine Fearon - erection of a farm dwelling nad garage - 140m north east of No. 61 Foughiletra Road, Jonesborough. (Case Officer report attached).**

Rec: REFUSAL

- A request for speaking rights has been received from Mr Stephen Hughes, Agent, in support of the application. **(Submission attached).**

P-2015-0095-F Geraldine Fearon.pdf

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11. **P/2015/0136/F - Mr L Magennis - use of existing first floor offices for Class A (2) use of (Financial and Professional Services) - 43 Forkhill Road, Ellisholding, Newry. (Case Officer report attached).**

Rec: REFUSAL

- A request for speaking rights has been received from Colin O'Callaghan, Planning Consultant, in support of the application. **(Submission attached).**

12. **P/2014/0894/F - Hilary McCamley - erection of dwelling - lands fronting Mayvale Court, Newry Road, Mayobridge (off Chapel Hill Road) and adjacent and north east of 8 Mayvale Court. (Case Officer report attached).**

Rec: REFUSAL

- A request for speaking rights has been received from Bernard Dinsmore, Agent, in support of the application. **(Submission attached).**

For Consideration and/or Decision

13. **NILGA Events - Planning in Councils - refresher series for Councillors. (Details attached).**

Elected Members and the Planning Committee (25 October 2016 - Craigavon Civic Centre)

The Councillor Role in the Development Plan Process(2 November 2016- Glenavon Hotel Cookstown)

Councillor and the Planning Appeals Commission (13 December 2016 - Antrim Civic Centre)

Working with Developers and Agents (Date/venue tbc)

For Noting

14. **Planning Department Performance Indicators. (Attached).**

15. **Report - contact from public representatives - August 2016. (Attached).**

16. Current planning appeals. (Attached).

Invitees

| | |
|--------------------------|--|
| Cllr Terry Andrews | terry.andrews@downdc.gov.uk |
| Cllr Naomi Bailie | naomi.bailie@nmandd.org |
| Cllr Patrick Brown | patrick.brown@nmandd.org |
| Cllr Robert Burgess | robert.burgess@downdc.gov.uk |
| Cllr Stephen Burns | stephen.burns@downdc.gov.uk |
| Lorraine Burns | lorraine.burns@newryandmourne.gov.uk |
| Cllr Pete Byrne | pete.byrne@nmandd.org |
| Cllr Michael Carr | michael.carr@newryandmourne.gov.uk |
| Cllr charlie casey | charlie.casey@newryandmourne.gov.uk |
| Cllr William Clarke | william.clarke@downdc.gov.uk |
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| Cllr Garth Craig | garth.craig@downdc.gov.uk |
| Cllr Dermot Curran | dermot.curran@downdc.gov.uk |
| Cllr Laura Devlin | laura.devlin@downdc.gov.uk |
| Ms Louise Dillon | louise.dillon@newryandmourne.gov.uk |
| Cllr Sean Doran | sean.doran@newryandmourne.gov.uk |
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| Cllr Harry Harvey | harry.harvey@newryandmourne.gov.uk |
| Cllr Terry Hearty | terry.hearty@newryandmourne.gov.uk |
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| Colette McAteer | collette.mcateer@newryandmourne.gov.uk |
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| Eileen McParland | eileen.mcparland@newryandmourne.gov.uk |
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| Cllr Mark Murnin | mark.murnin@nmandd.org |
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| Cllr Pol O'Gribin | pol.ogribin@nmandd.org |

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|-----------------------|--|
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| Cllr William Walker | william.walker@nmandd.org |

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|------------------------|----------------------------------|--------------------|----------------------|----------------------|------------------------------------|---|
| ITEM NO | 38 | | | | | |
| APPLIC NO | LA07/2016/0716/F | | Full | DATE VALID | 5/23/16 | |
| COUNCIL OPINION | REFUSAL | | | | | |
| APPLICANT | Peter Collins | 18 Pats Road | | AGENT | | |
| | Ballymartin | | | | | |
| | Kilkeel | | | | | |
| | BT34 4NX | | | | | |
| | | | | | NA | |
| LOCATION | Main Road | | | | | |
| | Ballymartin | | | | | |
| | east of junction with Wrack Road | | | | | |
| | BT34 4NY | | | | | |
| PROPOSAL | Replacement Dwelling | | | | | |
| REPRESENTATIONS | OBJ Letters | SUP Letters | OBJ Petitions | SUP Petitions | | |
| | 0 | 0 | 0 | 0 | 0 | |
| | | | Addresses | Signatures | Addresses Signatures | |
| | | | 0 | 0 | 0 | 0 |

- 1 The proposal is contrary to the policy provisions of the Strategic Planning Policy Statement for Northern Ireland and Policies CTY1 and CTY3 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that there is no structure that exhibits the essential characteristics of a dwelling.
- 2 The proposal is contrary to Policy AMP 3 of Planning Policy Statement 3 – Access, Movement and Parking in that the A2 Main Road is a Protected Traffic Route and the application does not fall within the exceptions listed in the policy as there is no building to be replaced and the proposal would result in the creation of a new vehicular access onto a Protected Traffic Route.



Comhairle Ceantair
an Iúir, Mhúrn
agus an Dúin

**Newry, Mourne
and Down**
District Council

Application Ref: LA07/2016/0716/F

Date Received: 23rd May 2016

Proposal: This application seeks full planning permission for a replacement dwelling

Location: The proposed site is located along Main Road, Ballymartin - immediately to the east of its junction with Wrack Road.

Site Characteristics & Area Characteristics:

The application site is located along Main Road, Ballymartin - immediately to the east of its junction with Wrack Road, approximately 0.9km south west of Ballymartin and 0.7km east of Kilkeel. This section of the Main Road has recently been widened as part of a road improvement scheme. The site is an undefined right trapezoid plot within a large agricultural field situated along the Main Road. The field slopes from the north-west corner down to the south east. The field boundaries are defined by a post and wire fence along the Main Road frontage and eastern boundary; a mature hedgerow which is classified as NI Priority Habitat along the Wrack Road boundary; and by hedgerow and sporadic trees along the southern boundary. The Mullagh River is located approximately 120m to the east of the application site.

The proposed site is located in a rural area that is classified as open countryside. It is within the Mournes Area of Outstanding Natural Beauty, an Area of Scientific Interest and an Area of Constraint on Mineral Developments as designated in the Banbridge, Newry and Mourne Area Plan 2015.



Satellite Image of Application Site

Site History:

- P/1987/1324 - Site for Replacement Dwelling – Granted outline permission on 08.12.1987
- P/1990/1149 - Site for replacement dwelling (Renewal of Outline Planning Permission) – Granted outline permission on 14.02.1991. There was an informative attached to this approval which states: *“The Department would advise that as the dwelling to be replaced has now been removed it is unlikely that any further renewals of outline planning permission will be granted as the site lies within an area of strict planning control.”*
- P/1994/0164 – Erection of bungalow – Reserved Matters approval granted on 30.06.1994. Condition number 01 of this approval states: *“As required by Article 35 of the Planning (Northern Ireland) Order 1991 the development to which this approval relates must be begun by whichever is the later of the following dates:
(i) The expiration of a period of five years from the grant of outline planning permission; or
(ii) The expiration of a period of two years from the date hereof.”*
- The later date for commencement was 30.06.1996
- P/1996/0764 - Erection of replacement dwelling – This application was received on 26.06.1996 and granted full planning permission on 27.05.1997. The application was initially recommended for refusal on the basis that there was no dwelling to replace, the design was inappropriate and the proposal was contrary to Main traffic Route Policy. However as the application was received prior to the expiration date (30.06.1996) of the previous Reserved Matters approval, the application was considered to be a change of house type application and was subsequently granted permission. A condition was attached to the approval stating the development must be begun not later than the expiration of five years from the date of approval.
- P/2006/1613/O - Site for replacement dwelling – Outline permission was granted on 04.11.2010. This application was received 4 years after the previous approval had expired and was initially recommended for refusal. The reasons for refusal were based on the fact there is no dwelling to replace and the proposal involved the creation of a new access onto a Protected Route. The application was reassessed and subsequently granted approved.

P/2013/0267/RM - Replacement dwelling – Reserved Matters approval was granted on 16th May 2013. Condition number 01 of this approval states:

“As required by Article 35 of the Planning (Northern Ireland) Order 1991 the development to which this approval relates must be begun by whichever is the later of the following dates:-

- i. The expiration of a period of 5 years from the grant of outline planning permission; or*
- ii. The expiration of a period of 2 years from the date hereof.*

Reason: Time limit.”

The later date for commencement was 04.11.2015.

Planning Policies & Material Considerations:

- The Banbridge, Newry and Mourne Area Plan 2015;
- The Strategic Planning Policy Statement for Northern Ireland;
- Planning Policy Statement 2 – Natural Heritage;
- Planning Policy Statement 3 – Access, Movement and Parking; &
- Planning Policy Statement 21 – Sustainable Development in the Countryside.

Consultations:

Transport NI - If the proposed dwelling to be replaced could be reasonably occupied at present or following minor modifications Transport NI has no objection to the application subject to conditions. However the A2 is a Protected Traffic Route and Planning must be satisfied that this application falls within the exceptions listed in the policy relating to new accesses onto protected routes. If this application does not fall within the exceptions listed then it should be refused.

NIEA - Records of hedgerow habitat occurring within or adjacent to the site that is classified as NI Priority Habitat. A biodiversity Checklist will help identify potential impacts arising from the proposal. NIEA to be re-consulted if deemed necessary.
If the application is to be approved the agent will be asked to submit a completed biodiversity checklist.

NI Water - Standard Response.

Objections & Representations

3 neighbour notification letters were issued and the application was advertised in the local press the week beginning 13th June 2016. No objections or representations have been received to date.

Consideration and Assessment:

Section 45 of the Planning Act (Northern Ireland) 2011 requires the Council to have regard to the local development plan, so far as material to the application, and to any other material considerations. The site is currently within the remit of the Banbridge, Newry & Mourne Area Plan 2015. There are no specific policies in the Plan relevant to the determination of the application and it directs the decision-maker to the operational policies of the SPPS, PPS 2, PPS 3 and PPS 21.

As there is no significant change to the policy requirements for a replacement dwelling following the publication of the SPPS, the retained policy of PPS 21 will be given substantial weight in determining the principle of the proposal in accordance with paragraph 1.12 of the SPPS.

Planning Policy Statement 21 – Sustainable Development in the Countryside

Policy CTY1 states there are a range of types of development which are acceptable in principle in the countryside. This includes replacement dwellings if they are in accordance with Policy CTY 3. Policy CTY 3 states planning permission will be granted for a replacement dwelling where the building to be replaced exhibits the essential characteristics of a dwelling and as a minimum all external structural walls are substantially intact.

There is an extensive history of applications for a replacement dwelling on this site dating back to 1987, the details of which have been outlined above. According to a written statement submitted by Clive Henning Architects in support of application reference P/2006/1613/O, planning approval for a replacement dwelling (P/1996/0764) resulted from a proposal by the Roads Service to improve the alignment and visibility on Newcastle Road, Kilkeel - west of its junction with Wrack Road. Implementation of the improvement works required the removal of a house and land around a farmyard. Mr James Martin was the owner of the land at that time and it was claimed in the statement of support to P/2006/1613/O that as part of the compensatory measures for the demolition of the dwelling, planning permission was granted to Mr Martin for a replacement dwelling. The land appears to have been sold at least once, possibly twice since the date of the original 1987 approval.

Further correspondence on P/2006/1613/O from Clive Henning Architects (dated 16th April 1999) states there was an existing dwelling owned by Mr James Martin who obtained permission for a replacement on the 27th May 1997 (P/1996/0764). The correspondence goes on to state that the only change in circumstances from the approval of P/1996/0764 and the submission of application P/2006/1613/O were the demolition of the original dwelling and the publication of draft PPS 21. However according to the planning history this appears to be factually incorrect. The original

dwelling appears to have been demolished prior to the approval of planning application P/1990/1149, hence the inclusion of the informative stating:

“...as the dwelling to be replaced has now been removed it is unlikely that any further renewals of outline planning permission will be granted as the site lies within an area of strict planning control.”

Although the planning history is a material consideration, there is no extant approval on this site. The date for commencement of the most recent planning approval (P/2013/0267/RM) was 4th November 2015. As this application was received on 23rd May 2016 all of the previous permissions had since expired and the development has not commenced.

This planning application will now be assessed against prevailing planning policy. Policy CTY 3 clearly states planning permission will be granted for a replacement dwelling where the building to be replaced exhibits the essential characteristics of a dwelling and as a minimum all external structural walls are substantially intact. As the original 1987 outline application file was decided nearly 30 years ago the documents have since been destroyed in line with the Departments Disposal of Records Schedule. There is no record of the condition of the original dwelling prior to its demolition therefore there is no guarantee that it would meet the above policy requirements for replacement had it not been demolished. Nevertheless, as the dwelling was demolished almost 30 years ago there is no building to be replaced.

In addition to the above, proposals for a replacement dwelling will only be permitted under Policy CTY 3 where all of a number of additional criteria are met.

- Criterion 1 requires the proposed dwelling to be sited within the established curtilage of the existing building unless either (a) the curtilage is so restricted that it could not reasonably accommodate a modest sized dwelling, or (b) it can be shown that an alternative position nearby would result in demonstrable landscape, heritage, access or amenity benefits. There is no building on site to be replaced and due to the passage of time it is not clear where the original dwelling was sited. As the original dwelling was demolished for road improvements an off-site replacement may have been the only option.
- Criterion 2 - There is no record of the size, scale, mass or position of the original dwelling prior to its demolition. As a result it cannot be determined if the new dwelling would have a visual impact significantly greater than the original dwelling. However as there has been no building on the site for almost 30 years the provision of a new dwelling on this site would have a significant visual impact on the surrounding landscape, especially when viewed on approach from the east along the A2 Main Road.

- Criterion 3 - The design of the dwelling is the same as that previously approved under reference P/2013/0267/RM and would be considered acceptable.
- Criterion 4 – All necessary services can be provided without significant adverse impact on the environment or character of the locality.
- Criterion 5 – There is good visibility in both directions, however the A2 Main Road is a Protected Route and access onto it must comply with the policy requirements of PPS 3.

PPS 3 – Access, Movement and Parking

Policy AMP 3 of PPS 3 states planning permission will only be granted for a development proposal involving direct access, or the intensification of the use of an existing access onto a Protected Route in a number of cases, one of which is for a replacement dwelling. The building to be replaced must meet the relevant criteria for development and should utilise an existing vehicular access onto the Protected Route. As discussed above, there is no building to be replaced and there is no existing vehicular access. The proposed development does not fall within the exceptions listed in the policy relating to new access onto protected routes and is therefore contrary to the policy requirements of AMP 3 of PPS 3.



Image 1 - View of the Application Site

Recommendation:
Refusal

Refusal Reasons:

1. The proposal is contrary to the policy provisions of the Strategic Planning Policy Statement for Northern Ireland and Policies CTY1 and CTY3 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that there is no structure that exhibits the essential characteristics of a dwelling.
2. The proposal is contrary to Policy AMP 3 of Planning Policy Statement 3 – Access, Movement and Parking in that the A2 Main Road is a Protected Traffic Route and the application does not fall within the exceptions listed in the policy as there is no building to be replaced and the proposal would result in the creation of a new vehicular access onto a Protected Traffic Route.

Case Officer Signature: _____ **Date:** _____

Authorised Officer Signature: _____ **Date:** _____

Newry, Mourne and Down Council
O'Hagan House
Monaghan Row
Newry
BT35 8DJ

20th September 2016

Dear Sir / Madam,

Your Ref: LA07/2016/0716/F
Applicant: Peter Collins 18 Pats Road, Ballymartin, Kilkeel
Proposal: Replacement Dwelling
Location: Main Road, Ballymartin, east of junction with Wrack Road

1. I refer to the above planning application, which is to be presented to the Council's planning committee on 28th September 2016.
2. The reasons for refusal are:

The proposal is contrary to the policy provisions of the Strategic Planning Policy Statement for Northern Ireland and Policies CTY1 and CTY3 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that there is no structure that exhibits the essential characteristics of a dwelling.

The proposal is contrary to Policy AMP 3 of Planning Policy Statement 3 – Access, Movement and Parking in that the A2 Main Road is a Protected Traffic Route and the application does not fall within the exceptions listed in the policy as there is no building to be replaced and the proposal would result in the creation of a new vehicular access onto a Protected Traffic Route.

3. The second reason for refusal is directly relevant to the principle of development. If a new dwelling is deemed acceptable in principle, the second reason for refusal will be addressed automatically. Therefore, the key issue is the principle of development.



RTPI
Chartered Town Planner



4. O'Callaghan Planning has only just received formal instructions in respect of this matter, and the Council is therefore, respectfully, requested to refrain from determining this application until a meeting is held with senior planning officials, in order to allow me an opportunity to address the refusal reasons. Until this time, the applicant has had no professional representation.

Background

5. There is an extensive planning history on this site and associated with this proposal. The earliest planning approval was for a replacement dwelling and this dated back to December 1987.

Chronology:

P/1987/1324 – Outline permission granted for replacement dwelling

P/1990/1149 – Renewal of outline permission.

- i. At this time, the dwelling to be replaced was already demolished and an informative comment on the planning approval advised that it was unlikely any further renewals would be granted. However, in short, permission was granted to replace the dwelling notwithstanding that there was no dwelling to replace.

P/1994/0164 Approval of reserved matters was granted for the erection of a dwelling. This permission expired on 30th June 1996.

P/1996/0764 This full application was approved on foot of an extant reserved matters approval. It was initially recommended for refusal since there was no dwelling to replace and due to purported failure to comply with protected routes policy. However, greater weight was ultimately given to the fact that there were ten days remaining of the RM approval at the date of this application's submission. This approval received the standard 5 year time limit, notwithstanding that the dwelling to be replaced was no longer in situ and that this permission effectively extended the previous permission's time limit, contrary to advice previously tendered.



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P/2006/1613/O This outline application was submitted four years after the previous permission expired. Despite being initially recommended for refusal (because there was no dwelling to be replaced) the application was approved on foot of a file note signed by the Area Planning Manager (Appendix 1).

The rationale that justified the granting of outline permission is no less relevant then than it is now.

P/2013/0267 Approval of reserved matters was granted on 16th May 2013. The latter date for the commencement of development was 04th November 2015.

It would appear that development had not commenced on the site and that the new application was submitted almost seven months after the expiry of the original approval.

6. Since the date upon which the original approval was granted, the ownership of the site has changed at least twice. Two previous owners have in effect benefitted from pragmatic planning decisions that allowed the replacement of a dwelling that was no longer in situ. In these narrow circumstances it would be unreasonable to deny the current applicant the same opportunity to build a dwelling on the site.
7. In 1990, when permission was sought to renew the earlier outline permission, the date of submission of an application for approval of reserved matters had passed. Therefore, the submission of an application for full permission within the 5 year lifetime of the outline permission (the only way the application could have been granted) required the dispensation of a special degree of flexibility. One might argue that it is only right that such flexibility and goodwill be extended towards individual applicants on occasion, and that such courses of action should not be repeated. However, in 2010, a different landowner benefitted from a planning approval with precisely the same justification as before, only this time the reasons for so doing were formally laid out on the Area Planning Manager's summary of the reasons for the approval. As the circumstances pertaining at the present time are in effect unchanged from those pertaining at the dates of the earlier decisions, to refuse permission now would in effect be unreasonable, since it would be a significant departure from the pragmatic attitude directed to previous landowners.



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8. In 2010, when outline permission was granted for a replacement dwelling, the previous application had expired by four years. In this case, the delay submitting the current application was but a mere seven months.
9. The previous area planning manager's decision cannot be dismissed lightly or brushed off as a "mistake" or an error in the application or disapplication of policy. The key fact is that the previous planning manager's decision was entirely lawful.
10. If the members of the Planning Committee have any fears in relation to approval of this application (i.e. that such a course of action could be construed as unlawful, or ultra vires) I would point to the long held point of planning practice, enshrined in planning case law, that it is perfectly lawful to depart from or to disapply a planning policy.
11. Planning policy does not need to be adhered to slavishly, particularly where planning authorities' wider goals are not compromised. In this respect, the *Lamont* judicial review is particularly relevant. Therein, it was stated that:

"Of course, the Planning Service need not 'slavishly' follow the policy. The policy is one of many under the Planning Policy Statement 21 which focuses on sustainable development in the countryside. Within PPS21 a number of like situations are grouped together, for example, proposals for dwellings on farms. The policy indicates the preferred approach to these like cases in order to achieve the broader social and environmental goals relating to development in the countryside. However, the policy itself, and much case law on this and similar issues, acknowledges that no policy can take into account the myriad considerations that may arise in individual fact scenarios that arise in the broad policy area. No planning policy can anticipate the personal, environmental, logistical etc. circumstances of all the individual planning applications made under the policy that need to be considered. However, what is contained in the policy, which cannot be ignored is the thrust of the desired result of the policy".

"In short compass, the policy should be adhered to where possible. It can and should be disapplied in circumstances where there is good reason to do so for example if strict adherence to the policy would damage some other important interest unacceptably and a balance needs to be struck. It is entirely lawful for



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the department to choose to disapply or modify a policy. The key test for when a department can be said to have lawfully disappplied a policy is found in ***EC Gransden + Co. Ltd and Falkbridge Ltd. v Secretary of State for the Environment:***

- i. ... It seems to me, first of all, that any policy, if it is to be a policy which is a proper policy for planning purposes, must envisage that in exceptional circumstances the minister has the right to depart from that policy. If the situation was otherwise it would not be a statement of policy but something seeking to go beyond that and, bearing in mind the terms of section 29 of the Town and country Planning Act of 1971, it would be an improper attempt to curtail the discretion which is provided by the Act, which indicates that in determining planning applications regard is not only to be had to the provisions of the development plan so far as material, but also to any other material considerations."

12. The Council wrote to the applicant on 13th September 2016, confirming that the application had been recommended for refusal for the two reasons set out above. The Council planning officer's professional planning report summarises the Council's assessment of the case thus far. This assessment points out that "although planning history is a material consideration, there is no extant approval on the site". However, the Council's assessment of the case made no attempt to examine the reasons why two previous permissions were granted in circumstances similar if not identical to those that pertain at the present time. The failure to explain why it was appropriate to depart from policy on two previous occasions but not to depart from policy now renders the Council's assessment of this proposal incomplete, Wednesbury unreasonable, and administratively unfair towards the current applicant. In light of the above, the Council is respectfully requested to reconsider its assessment of the proposal. If not outwardly minded to approve the application, the Council should as a minimum give some thought to the reconsideration of the proposal in light of this new evidence.



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Chartered Town Planners





13. In light of the late stage of my involvement, it would be reasonable to afford some additional time to address the issues of concern and in that respect I look forward to hearing from you.

Yours Faithfully,

Colin O'Callaghan
Chartered Town Planner
BSc Hons Dip TP MRTPI



APPENDIX 1

File note: Previous Chief Planning Officer's justification for approval of application P/2006/1613/O



Divisional Planning Office

Marlborough House
Central Way
Craigavon
Co. Armagh
BT64 1AD

P/2006/1613/0

Replacement Dwelling at Main Road, Ballymartin for Mr G Coulter

I have reviewed this case and am of the opinion that in this particular case it would be appropriate to grant permission for a dwelling.

I have reached this conclusion for the following reasons:

- a strict reading of current policy would indicate that this should be refused permission as there is no dwelling to be replaced. However, the purpose of policy is to give guidance and as the applicant has indicated all particular and peculiar circumstances cannot be covered as exceptions – this is a matter of judgement.
- The dwelling was removed in the public interest and permission granted and renewed for the replacement. The presence of a dwelling was not in these circumstances an issue and had the owner been timely in renewing his permission, the Department would not now need to make a judgement on the issue. The application was received in August 2006 and the previous approval expired in May 2002.
- The site remains within the AONB and accesses onto the MTR. However, PPS21 has now removed the status of greenbelt/GPA.

Given that the circumstances of this application have not changed since the dwelling was demolished. I feel that it would be perverse to now refuse the replacement simply because a renewal of permission had been *missed* in 2002.

IAN McALLISTER
Divisional Planning Manager

4 August 2010



Application ID: P/2006/1613/O

Case Officer: Mr P Fitzsimons

Development Control Officer's Professional Planning Report

| | | | |
|--------------------------------------|---|--------------------------------------|---|
| Case Officer: Mr P Fitzsimons | | Application ID: P/2006/1613/O | |
| | | Application Type: Outline | |
| Applicant Name and Address: | Mr G Coulter M.B.E. 125 Harbour Road Kilkeel BT34 4AT | Agent Name and Address: | Mr C Henning Clive Henning Architects 4 Carleton Street Portadown Co.Armagh BT62 3EN |

Location: Main Road, Ballymartin, east of junction with Wrack Road

Development Type: Replacement

Proposal: Site for replacement dwelling

Date Valid: 10th July 2006

Statutory Expiry Date: 9th October 2006

Date of last Neighbour Notifications: 25th August 2006

Date of District Council Consultation: 6/3/08 defer
7/10/10 agree

Date of A31 Determination & Decision: No

EIA Determination:

Date First Advertised: 8th September 2006

Date Last Advertised: 8th September 2006

Consultees

Newry and Mourne District Council (COUNCIL), Monaghan Row, NEWRY

Roads Service - Downpatrick Office (DEPARTMENTAL), Rathkeltair House, DOWNPATRICK, BT30 6EA

Water Service - Downpatrick Office (DEPARTMENTAL), Cloonagh Road, DOWNPATRICK, BT30 6ED

Notified Neighbours

The Owner/Occupier (NEIGHBOUR), 181 Main Road, Ballymartin, Kilkeel, Co. Down

The Owner/Occupier (NEIGHBOUR), 185 Main Road, Ballymartin, Kilkeel, Co. Down

NEIGHBOUR, 40 Main Road, Ballymartin, Kilkeel, Co. Down

Representations

Application ID: P/2006/1613/O**Case Officer: Mr P Fitzsimons**

Clive Hennings (UNSOLICITED), Clive Henning Architects, 4 Carleton Street, Portadown, Co Armagh, BT62 3EN

KOMRADE (UNSOLICITED), Dr A W Mitchell (Chairman), 18 Ballyardle Road, Kilkeel

Letter, Non-committal, Clive Hennings (UNSOLICITED), Clive Henning Architects, 4 Carleton Street, Portadown, Co Armagh, BT62 3EN

Letter, Non-committal, KOMRADE (UNSOLICITED), Dr A W Mitchell (Chairman), 18 Ballyardle Road, Kilkeel

08 Consultations Summary

No data found

Consultation Summary

No data found

Consultation replies text

Newry and Mourne District Council

Roads Service - Downpatrick Office

Water Service - Downpatrick Office

Consultee replies

Newry and Mourne District Council, Monaghan Row, NEWRY (COUNCIL), Substantive Reply, Letter, 18th September 2006

Roads Service - Downpatrick Office, Rathkeltair House, DOWNPATRICK, BT30 6EA (DEPARTMENTAL), Add Info Requested, Letter, 8th September 2006

Water Service - Downpatrick Office, Cloonagh Road, DOWNPATRICK, BT30 6ED (DEPARTMENTAL), Statutory, Letter, 5th September 2006

Site History

P/1987/1326

Mr H Magill

6 Flagstaff Road Newry

Erection of bungalow

70 METRES WEST OF NO6 FLAGSTAFF ROAD NEWRY

Full

Erection of Building(s)

Local Authority decision

Approval (historical)

11-JAN-88

P/1990/1149

Mr J Martin

No17 Anthonys Road Ballymartin Kilkeel

Site for replacement dwelling (Renewal of Outline

Planning Permission)

Application ID: P/2006/1613/O

Case Officer: Mr P Fitzsimons

 MAIN ROAD (EAST OF JUNCTION WITH WRACK ROAD) BALLYMARTIN KILKEEL

Outline

Erection of Building(s)

Local Authority decision

Approval (historical)

14-FEB-91

P/1992/1222

C E Stevenson & Sons

No74 Newcastle Road Kilkeel

Extension to sand and gravel works

OPPOSITE NOS181 & 185 NEWCASTLE ROAD KILKEEL

Full

Engineering Operation

Local Authority decision

Approval (historical)

14-SEP-93

P/1994/0164

Mr James Martin

Erection of bungalow

MAIN ROAD (EAST OF JUNCTION WITH WRACK ROAD) BALLYMARTIN KILKEEL

R M

Erection of Building(s)

Local Authority decision

Approval (historical)

30-JUN-94

P/1996/0764

Mr James Martin

17 Anthony's Road Ballymartin

Erection of replacement dwelling

MAIN ROAD, BALLYMARTIN (EAST OF ITS JUNCTION WITH WRACK ROAD)

Full

Erection of Building(s)

Local Authority decision

Approval (historical)

27-MAY-97

P/2002/0718/Q

Coulter Industries Ltd.

c/o Agent

Tourist Development

Kilkeel - Annalong Road, Kilkeel

Pre App Preliminary Enquiry

Erection of Building(s)

22nd May 2002

Constraints

AONB/0013 - Mourne (N&M)

Newry and Mourne

AONB - Environment Areas

Declared

Application ID: P/2006/1613/O

Case Officer: Mr P Fitzsimons

ASI/028 - Mullartown Point
Newry & Mourne District
ASI - Environment Areas
Designated

SD - South Down
South Down
Parl Constituency Boundary - RESIDUAL ITEMS
Effective

Representations – including objections

1. Brief Summary of Issues – see below.
2. Consideration of Issues – see below.

Policies

APB/P/003 - Mourne Area Plan Boundary
Newry & Mourne District
Area Plan Boundary - PLAN POLICIES
Adopted

SUBA/P/003 - Mourne Area Plan Boundary
Newry & Mourne District
Area Plan Boundary - PLAN POLICIES
Adopted

APB/P/002 - Newry & Mourne District Rural Area Subject Plan Boundary
Newry & Mourne District
Area Plan Boundary - PLAN POLICIES
Adopted

SUBA/P/002 - Newry & Mourne District Rural Area Subject Plan Boundary
Newry & Mourne District
Area Plan Boundary - PLAN POLICIES
Adopted

CPA/P/002 - Zone B
Mourne AONB
CPA - PLAN POLICIES

DC0901MW

Application ID: P/2006/1613/O**Case Officer: Mr P Fitzsimons**

Adopted

DB/P/001 - Newry & Mourne District Council Boundary

Newry & Mourne District

District Boundary - PLAN POLICIES

Statutory

Case Officer Report**Date of Site Visit:** 4/9/07

SITE VISIT DETAILS/DESCRIPTIONS

1. Characteristics of Site

The application site is an undefined rectangular plot within a larger roadside field. It is located on the southern side of the main road. The field is bounded to the front by a roadside hedge and post & wire fence. To the west it is bounded by a steep bank with gorse bushes which rises up to Wrack Road.

The field falls gradually towards the SE, away from the main road. The site boundaries are undefined – cut out of the larger field.

2. Characteristics of Area

This is a rural area within the Mourne AONB. The field is low lying relative to Wrack Road and it was probably an old sand extraction site. There is a traditional cottage to the east and a number of single storey cottages further to the west of the site.

3. Description of Proposal

The proposal seeks outline planning permission for site for replacement dwelling – the application is accompanied by a letter referring to the planning history on the site and explains that the application is to renew a planning permission for a replacement dwelling granted to Mr James Martin on 27 May 1997 under reference P/1996/0764.

ASSESSMENT OF POLICY AND OTHER MATERIAL CONSIDERATIONS

Site History:

There have been permissions on this site since 1987 on the basis of replacement of a house, the demolition of which was required to facilitate road improvement works. The house was demolished and the works carried out. The applicant was advised under reference P/190/1149/O that there would be no further grant of outline planning approval as the building had been demolished. A reserved matters approval was obtained in 1994 under reference P/1994/0164/RM.

Despite the above, the Dep't granted planning permission for the erection of a replacement dwelling under reference P/1996/0764/F, approved 27/5/1997. This application was initially recommended for refusal on the basis of no dwelling to replace, inappropriate design and contrary to Main Traffic Route Policy. It was

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ultimately approved because the RM permission expired on 30/6/96 and the full application was submitted on 24/6/96 and was effectively a change of house type application.

Policies relevant in the determination of this application include:

- PPS1 General Principles
- PPS3 Access, Movement and Parking
- SP6, HOU8, DES5, DES6, DES7 and PSU4 of A Planning Strategy for Rural Northern Ireland
- The Newry and Mourne District Rural Area Subject Plan 1986-1999
- The Banbridge/Newry and Mourne Draft Area Plan 2015

A draft version of PPS14 Sustainable Development in the Countryside was published on 16th March 2006. This publication bears substantial weight in the determination of all applications received after this date. This application was submitted on 7/6/06.

Policy CTY 1 of draft PPS 14 states that there will be a presumption against new development in the countryside with the exception of a limited number of types which are as follows:-

- a farm dwelling in accordance with Policy CTY 2;
- a dwelling for a retiring farmer in accordance with Policy CTY 3;
- a dwelling to meet the essential needs of a non-agricultural business enterprise in accordance with Policy CTY 4;
- a replacement dwelling in accordance with Policy CTY 5; or
- the development of a small gap site sufficient only to accommodate one house within an otherwise substantial and continuously built up frontage in accordance with Policy CTY 12.

There is no dwelling on the site to be replaced. There is relevant history, however, the Dep't made it quite clear early on that there would be no further outline permissions granted on this site. The former dwelling was demolished approx. 20 years ago.

In the Newry and Mourne District Rural Area Subject Plan 1986-1999 the site is located within the Kilkeel Green Belt. In the draft Banbridge/Newry & Mourne Area Plan 2015, the site is located within the proposed Kilkeel Green Belt. On this basis Prematurity to the draft plan is not an issue. In any case, the application can be considered under policy CTY5 of Draft PPS14.

The applicant purchased the site from Mr Martin (previous applicant). It is not stated when the purchase occurred. The present applicant put in a preliminary application inquiry under reference P/2002/0718/Q. He may have owned the site at this time. The inquiry was submitted on 19/4/02. The Full permission granted under P/1996/0746/F expired on 27/5/2002. The present application for outline planning permission is intended as a renewal of a full permission. It was submitted on 7/6/06, that is, just over four years after the full permission expired.

Having considered the planning history, it is my recommendation that this application warrants a recommendation for refusal. The dwelling was demolished about 20 years ago and it was made clear that no further outline permissions would be granted for the replacement of the former dwelling. The permission issued in 1997 was on the basis of a change of house type application given that it was submitted before the previous RM application had lapsed.

In terms of siting, the site is road frontage and is visible on approach from the east. The site does not have sufficient screening vegetation to allow a dwelling to be satisfactorily integrated on this site.

The Environmental Health Department of Newry and Mourne District Council have no basic objections in relation to this proposal subject to consent to discharge.

Water Service has no objection subject to standard informatives.

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Roads Service had requested confirmation that this is a genuine replacement. Also requested confirmation of the access location approved under P/1996/0764. When advised of recommendation to refuse, i.e. no dwelling to be replaced, Roads Service advised that a refusal reason based on Protected Routes Policy should be included – reason M01.

No objections received, however, a standard representation has been received from KOMRADE.

Recommendation: Refusal is recommended on the grounds of:

- Contrary to policy CTY5;
- CTY 10 (lack of integration); and
- M01 (Protected Route Policy)

Recommendations

Refusal - Recommendation

Recommendations

Refusal - Recommendation

Case Officer

Brief Summary of Reasons for Recommendation

Brief Summary of Conditions

Case Officer's Recommendation

Case Officer

Recommendation - Refusal

Refusal Reasons

1 - A18B (HOUSING - Policy CTY 5 - Other Dwellings/ Buildings to be Replaced)

The proposal is contrary to Policies CTY1 and CTY5 of Draft Planning Policy Statement 14, Sustainable Development in the Countryside, and the accompanying Ministerial Statement and does not merit being considered as an exceptional case in that no dwelling exists on the site.

2 - A19 (HOUSING - Policy CTY 10 - Integration and Design of Buildings in the Countryside)

The proposal is contrary to Policy CTY10 of Draft Planning Policy Statement 14, Sustainable Development in the Countryside, and the accompanying Ministerial Statement in that the proposed site lacks long established natural boundaries and is unable to provide a suitable degree of enclosure for the building to integrate into the landscape. *omit.*

3 - M01 (PPS3 - ROADS CONSIDERATIONS)

The proposal is contrary to Policy AMP3 of Planning Policy Statement 3, Development Control: Roads Considerations in that it would, if permitted, result in the creation of a new vehicular access onto a Main Traffic Route (Protected Route), thereby prejudicing the free flow of traffic and conditions of general safety.

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Conditions

No data found

Informatives

No data found

DC Officer's Signature:



Date:

12/2/08


Application ID: P/2006/1613/O

Case Officer: Mr P Fitzsimons

Brief Summary of DC Group Discussion

Refuse as per PCO recommendation.

D.C. Group Signatures:



P. Duggan
E. Duggan
P. Fitzsimons

Date:

15 Feb 08

Council View

- No Comment
- Agree
- Disagree
- Defer
- Referral

Application ID: P/2006/1613/O

Case Officer: Mr P Fitzsimons

Late Items

1. *Amended Plans -*
- 2.
- 3.
- 4.
5. *Additional/Outstanding Consultations*
- 6.
- 7.
- 8.
9. *Late Representations*

Application ID: P/2006/1613/O


Case Officer: Mr P Fitzsimons

Deferred Application – Consideration

Reassessed under PPS 21 (Final Version).
Given the planning history associated with this proposal, on balance Approval.

- 1. Any new material factor(s) raised? YES/NO
- 2. Any different weight attached to planning judgement? YES/NO
- 3. Changed opinion? YES/NO

D.C. Group Signatures:


 M. Wade
 S. Green
 P. Chapman

Date:

22/9/10

| | | | | |
|------------------------|---|--------------------|-----------------------------|-----------------------------|
| ITEM NO | 39 | | | |
| APPLIC NO | LA07/2016/0731/O | Outline | DATE VALID | 5/31/16 |
| COUNCIL OPINION | REFUSAL | | | |
| APPLICANT | Ms Sheena Gribben 50 Castlewellan Road Ballyaughian Hilltown BT34 5YJ | | AGENT | |
| | | | | NA |
| LOCATION | 60 metres South East of 47 Castlewellan Road Hilltown | | | |
| PROPOSAL | Site for dwelling and garage on farm | | | |
| REPRESENTATIONS | OBJ Letters | SUP Letters | OBJ Petitions | SUP Petitions |
| | 0 | 0 | 0 | 0 |
| | | | Addresses Signatures | Addresses Signatures |

1. The proposal is contrary to The Strategic Planning Policy Statement for Northern Ireland (SPPS) and Planning Policy Statement 21 'Sustainable Development in the Countryside' Policies CTY1 and CTY10 and does not merit being considered as an exceptional case in that it has not been demonstrated that:
 - the proposed new building is visually linked or sited to cluster with an established group of buildings on the farm
 - health and safety reasons exist to justify an alternative site not visually linked or sited to cluster with an established group of buildings on the farm)
 - verifiable plans exist to expand the farm business at the existing building group to justify an alternative site not visually linked or sited to cluster with an established group of buildings on the farm
2. The proposal is contrary to The Strategic Planning Policy Statement for Northern Ireland (SPPS) and Planning Policy Statement 3 'Access, Movement and Parking' Policy AMP3 in that the proposal does not fall within the exceptions listed relating to new accesses onto Protected Routes and would therefore result in the intensification of an existing access onto a Protected Route.



Comhairle Ceantair
**an Iúir, Mhúrn
 agus an Dúin**

**Newry, Mourne
 and Down**
 District Council

Application Reference:

LA07/2016/0731/O

Date Received:

24/05/2016

Proposal:

Site for dwelling and garage on a farm

Location:

60m south east of No. 47 Castlewellan Road, Hilltown

Site Characteristics & Area Characteristics:

The site is located 2 miles north east of Hilltown in a rural area which forms part of the Mournes Area of Outstanding Natural Beauty. The area is predominantly rural in character and borders the Mourne Foothills and Ballroney Basin Landscape Character Areas, with undulating landscape. The area has faced a degree of development pressure over recent years, with a dispersal of single dwellings, primarily contemporary dwellings to the roadside, with numerous established farm steads located off existing laneways.

The site itself, currently 0.7 acres of agricultural land, is set back some 190 metres from the road, and is currently accessed via an established concrete laneway off the B8 Castlewellan Road, which is a designated Protected Traffic Route. This lane, which steeply slopes upwards towards the site, serves one other property, No. 49 Castlewellan Road, an established single storey bungalow. The site has well defined boundaries, with mature hedgerow on all four boundaries of the site, in addition to mature trees along the northern boundary which screen No.47, an existing two storey farm dwelling with detached agricultural buildings. The site is well screened from the road in terms of critical views, as shown further below.





Above: view taken from Castlewellan Road towards proposed site.

Site History:

There have been no previous applications on this specific site. Relevant surrounding history is shown below on the aerial overview image.

Relevant surrounding site history:



Planning Policies & Material Considerations:

The planning policies and material considerations relevant to the proposal include:

- Strategic Planning Policy Statement for Northern Ireland (SPPS)
- The Banbridge / Newry and Mourne Local Area Plan 2015
- PPS2 Natural Heritage
- PPS 3 Access, Movement and Parking
- PPS 6 Planning, Archaeology and the Built Heritage
- PPS 21 Sustainable Development in the Countryside
- 'Building on Tradition' A Sustainable Design Guide for the Northern Ireland Countryside
- 'Dwellings in the Mournes' A Design Guide

Consultations:

Transport NI – No objections in principle to the proposal. However as the B8 is a protected traffic route, planning must be satisfied that the application falls within the exceptions listed relating to the intensification of existing accesses onto protected routes. If this is not the case, then it should be refused.

DAERA Countryside Management Compliance Branch – in a consultation response dated 08/06/2016 it has been confirmed that the farm business ID as identified on the P1c form (660376) was created in 2015 in inheritance for business ID 605138 which started in 1998 and claimed until 2016, confirming that the farm business is both established and active.

NI Water – Generic response received

Department for Communities Historic Environment Division – was consulted due to the proximity of the site in relation to designated monument DOW048:018. HED Historic Monuments are content that the proposal is satisfactory to the SPPS and PPS 6 Planning, Archaeology and the Built Heritage policy requirements.

Objections & Representations

3 Neighbours notified 13/06/2016

No objections / representations received

Consideration and Assessment:**Banbridge / Newry & Mourne Area Plan 2015**

The site is located out with settlement development limits as identified by the Banbridge / Newry and Mourne Area Plan 2015. It is also within the designated Mournes Area of Outstanding Natural Beauty. In addition, the site is located off the B8, a protected route as indicated on Countryside map 3/01 of the Local Area Plan.

SPPS

As there is no significant change to the policy requirements for dwellings on farms following the publication of the SPPS and it is arguably less prescriptive, the retained policy of PPS21 will be given substantial weight in determining the principle of the proposal in accordance with paragraph 1.12 of the SPPS.

PPS 2 Natural Heritage

Policy NH6 of PPS2 applies to development within Areas of Outstanding Natural Beauty. Conditions can be imposed to ensure that the proposed farm dwelling is of an appropriate scale for the locality, that its siting is acceptable and that it respects local character. The retention of the locally distinctive stone walls will also be conditioned. The detailed design can be assessed against this policy at reserved matters stage.

PPS 6 Planning, Archaeology and the Built Heritage

The proposal is satisfactory to the requirements of PPS 6 Archaeology and policy requirements, as per consultation response outlined above from Historic Environment Division.

PPS 21 Sustainable Development in the Countryside

PPS21 Policy CTY1 states that a number of developments are acceptable in principle in the countryside. This includes farm dwellings if they are in accordance with Policy CTY10. There are three criteria to be met:

Criterion (a) requires that the farm business is currently active and has been established for at least 6 years.

DAERA Countryside Management Compliance Branch in their consultation response dated 08/06/2016 have confirmed that the relevant farm business ID 660376 was created in 2015 in inheritance for business ID 605138 which was started in 1998 and claimed Single Farm Payment, Less Favoured area Compensatory Allowances or Agri Schemes up until 2016. The information provided on the P1C form supporting this application tell us that the farm business ID 605138 transferred to farm business ID 660376 following the death of the previous farm owner. In this instance, a change of ID was required to transfer the farm business into the new name following inheritance. This consultation response together with supporting information is sufficient to satisfy criterion (a.)

Criterion (b) seeks to confirm that no dwellings or development opportunities out-with settlement limits have been sold off from the farm holding within 10 years of the date of the application.

For clarity, para.5.40 states that 'sold-off' refers to any development opportunity disposed of from the farm holding to any other person including a member of the

family. The provision of this criterion only applies from the introduction of draft PPS 21 in November 2008. There have been no prior development opportunities attached to either farm business ID 605138 or 660376; therefore criterion (b) is met.

Criterion (c) requires the new building to be visually linked or sited to cluster with an established group of buildings on the farm.



In this case, the established group of buildings are the cluster of No. 50 Castlewellan Road and detached farm buildings. A dwelling on the proposed site would not be considered to cluster with an established group of buildings on the farm, with approximately 240 metres separation distance between the farm buildings and the nearest point of the site.

The applicant was afforded the opportunity to determine if there are demonstrable health and safety reasons or verifiable plans to expand the farm business at the existing building group(s.) which would merit the siting away from an established group of buildings on the farm. A submission was made by Councillor Ennis on 8th September on behalf of the client which outlines that the applicant has health and safety concerns regarding the use of an access which runs through an active farm. There are three existing access points which exist at the farm (shown below.) The existing access which is used by No.50 is separate to the access to the farm, which has its own access, therefore I would contest that an existing access point could be used which does not run through the farm.



Existing access point 1



Existing access point 2 to No. 50



Existing separate Farm yard access

The submission also expresses concerns regarding integration, stating that the area around the farm is quite open to view and a new dwelling would be clearly visible and prominent and lack integration. Having considered this in detail, it is my opinion that this proposal fails to meet criterion c and there are other available suitable sites on the farm holding which could meet the policy criteria of PPS3 in terms of the use of an existing access and PPS21.

PPS3 Access, Movement and Parking

The B8 Castlewellan Road is a Protected Traffic Route. Following consultation, Transport NI has advised that planning must be satisfied the application falls within the exceptions relating to the intensification of existing accesses onto protected routes. If this is not the case, then it should be refused. This consultation response refers to the exceptions listed under Annex 1 to PPS 21 Consequential amendment to Policy AMP3 of PPS 3. Under this revision, planning permission will only be granted for a development proposal involving access onto a Protected Route in the following cases:

- a) **A replacement dwelling** - N/A to this application;
- b) **A farm dwelling** – where the farm dwelling would meet the criteria set out in policy CTY 10 of PPS 21 and access cannot be reasonably obtained from an

adjacent minor road. Where this cannot be achieved proposals will be required to make use of an existing vehicular access onto a Protected Route – the proposal does not meet criteria c of CTY 10 under PPS 21 therefore would not be considered an exception under this revision;

- c) **A dwelling serving an established commercial or industrial enterprise** – N/A to this application;
- d) **Other categories of development** – approval may be justified in particular cases for other developments which would meet the criteria for development in the countryside and access cannot reasonably be obtained from an adjacent minor road. – This proposal does not meet the criteria for development in the countryside as aforementioned under PPS 21 CTY10.

For the reasons outlined above, the proposal is not considered an exception to Policy AMP3 of PPS 3 Access, Movement and Parking.

Recommendation: Refusal

Reasons for Refusal:

1. The proposal is contrary to The Strategic Planning Policy Statement for Northern Ireland (SPPS) and Planning Policy Statement 21 'Sustainable Development in the Countryside' Policies CTY1 and CTY10 and does not merit being considered as an exceptional case in that it has not been demonstrated that:
 - the proposed new building is visually linked or sited to cluster with an established group of buildings on the farm;
 - health and safety reasons exist to justify an alternative site not visually linked or sited to cluster with an established group of buildings on the farm;
 - verifiable plans exist to expand the farm business at the existing building group to justify an alternative site not visually linked or sited to cluster with an established group of buildings on the farm;
2. The proposal is contrary to The Strategic Planning Policy Statement for Northern Ireland (SPPS) and Planning Policy Statement 3 'Access, Movement and Parking' Policy AMP3 in that the proposal does not fall within the exceptions listed relating to new accesses onto Protected Routes and would therefore result in the intensification of an existing access onto a Protected Route.

Case Officer Signature:

Date:

Appointed Officer Signature:

Date:

Thank you for your response.

The points I will be seeking to address at the meeting are as follows;

Planning officers have concerns that the proposal does not visually link or cluster with a group of buildings on the farm and it has not been demonstrated that the proposed site should be considered as an exception to the requirement of policy.

The site and farm complex accesses onto a Protected Route, which policy requires a new dwelling on a farm shall access onto a nearby minor road in the first instance and if this is not practical, access shall be made by use of an existing access on the farm. The policy does not permit the creation of a new access onto a protected route for a dwelling on a farm. In this case there are three vehicular accesses at the farm complex accessing onto the Castlewellan Road and an access opposite the farm which is proposed to be used to access the site.

I believe there to be valid health and safety grounds why the dwelling cannot use the existing accesses and must be sited away from the farm complex.

The farm is an active farm that keeps livestock and so there are obvious concerns that there would be a risk of cross contamination into and out of the farm from future occupiers of the new dwelling driving and walking through the farm yard. I have been advised by the farms veterinarian that the use of an access running through the active farm would present a biosecurity risk of potential cross contamination, which he advised would create a clear issue in the effective management of the farm and present a risk to animals. He also noted that in the event of a case of a real or suspected epizootic disease outbreak the dwelling would be inaccessible and would render it uninhabitable for an indeterminate time. The veterinarian advised that, where possible, an alternative access arrangement should be sought for the proposed dwelling.

My partner is employed by Almac in Craigavon, concerns about biosecurity would not only present a risk to the farm but may also put his employment with Almac at risk. I believe that if officers were to consult with DARD veterinarian services they would agree with the farm vets statement that the use of the existing accesses at the farm would present a biosecurity risk. In this case there is only one other alternative access, the one opposite the farm complex, which serves an existing dwelling on the lane and a number of fields. In order to comply with the policy to use an existing access on the farm the dwelling must be sited away from the farm and there are demonstrable health and safety reasons why it cannot be beside the farm complex.

More generally, I have concerns that having a future family home sited so close to the main farm and a busy road would present a risk in future to my family. Whilst it is appreciated that the policy does require a visual link or clustering, in most cases this can be achieved with a degree of separation. However, the area around the farm is quite open to view and any separation from the farm would leave the new dwelling clearly visible from the Castlewellan Road and it would be prominent and lack any suitable backdrop or integration. The proposed site would be well removed

from the active farm complex and there would be significantly less visual impact from the proposed site than anywhere adjacent to the farm. Considering this is part of the AONB this is of critical importance.

I believe I have valid grounds to seek an off site replacement in this instance. The choice of site allows me to use an existing access onto the Protected Route so to ensure the safe movement of traffic, and it will preserve the visual amenity of the AONB.

I believe that the planning department had failed to recognise that the building adjacent to the current dwelling house is an active farm building and so the access is not solely for domestic use as the planning report suggested. I also feel that no consideration has been given to the visual impact that a dwelling adjacent to the farm would have on the AONB as this was not addressed in the planning report.

I would like to submit some photographic evidence to support my concerns regarding health and safety at the 3 access points currently in active use by the farm business and to better demonstrate the farm layout. If you could advise me of how I could do this that would be greatly appreciated.

I have attached them to this email if that is suitable.

Thank you

Sheena Gribben































| | | | | |
|------------------------|--|--------------------|-----------------------------|--|
| ITEM NO | 42 | | | |
| APPLIC NO | LA07/2016/0812/O | Outline | DATE VALID | 6/16/16 |
| COUNCIL OPINION | REFUSAL | | | |
| APPLICANT | George Kelly 97B Maphoner Road Mullaghbawn Newry BT35 9TR | | AGENT | Collins & Collins 18 Margaret St Newry BT34 1DF |
| | | | | 3026 6602 |
| LOCATION | Between No. 54 & 54a Mill Road Mullaghbawn Newry Co. Down | | | |
| PROPOSAL | New dwelling with domestic garage. Gap/Infill site | | | |
| REPRESENTATIONS | OBJ Letters | SUP Letters | OBJ Petitions | SUP Petitions |
| | 1 | 0 | 0 | 0 |
| | | | Addresses Signatures | Addresses Signatures |
| | | | 0 0 0 0 | |

- 1 The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland and to Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
- 2 The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland and to Policy CTY8 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the proposal does not represent a gap site in an otherwise substantial and built up frontage that respects the existing development pattern, and would, if permitted, result in the creation of ribbon development along Mill Road.
- 3 The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland and to Policy CTY13 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the proposed site is unable to provide a suitable degree of enclosure for the proposed dwelling and garage to visually integrate into the surrounding landscape.
- 4 The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland and Policy CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the dwelling would, if permitted, result in a suburban style build-up of development when viewed with existing and approved buildings and would therefore result in a detrimental change to the rural character of the countryside.
- 5 The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland and Policy CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the dwelling would, if permitted, not respect the traditional pattern of settlement exhibited in that area and create a ribbon of development and would therefore result in a detrimental change to the rural character of the countryside.
- 6 The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland and Policy NH6 of Planning Policy Statement 2 in that the siting of the proposal is not sympathetic to the special character of the Area of Outstanding Natural Beauty in general and of the particular locality.



Comhairle Ceantair
an Iúir, Mhúrn
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**Newry, Mourne
and Down**
District Council

Application Reference: LA07/2016/0812/O

Date Received: 16/06/16

Proposal:

The application is for outline planning permission for a new dwelling with domestic garage in a gap/infill site.

Location:

The application site is located adjacent to, and to the north of, No. 54A Mill Road, Mullaghbawn, Newry. The application site is located within an agricultural field. The site is located approximately 1.5 miles north of the settlement of Mullaghbawn and approximately 4 miles south-west of the settlement of Camlough.

Site Characteristics & Area Characteristics:

The site is in a rural area outside settlement limits and within an Area of Outstanding Natural Beauty as defined on the Banbridge, Newry and Mourne Area Plan 2015. There are a number of single dwellings and farm groups in the area. An agricultural field and the curtilage of No. 54 Mill Road abuts the western boundary of the site. The curtilage of No. 54A Mill Road abuts the southern boundary of the site. Mill Road abuts the eastern boundary of the site. The access lane to No. 54 Mill Road abuts the northern boundary of the site. To the north-east of the site is No. 55 Mill Road. There are agricultural fields to the west, north and east of the site. A public road, which joins Mill Road, is to the south of the application site. Adjacent to the junction to the south is are two agricultural fields which abut Nos. 50 and 52A Mill Road.

The application site is a level agricultural field which sits below the level of the road. The northern boundary and part of the western boundary are defined by a wooden post and rail fence. The southern and eastern boundaries and part of the western boundary are defined by a post-and-wire fence.

Site History:

Planning history within the application site:

1. Planning ref: P/2005/2607/RM (Permission for No. 54A Mill Road)
Applicant: Mr & Mrs Brian Kirwan
Proposal: Site for dwelling
Decision: Permission Granted
Decision date: 12.01.2007
2. Planning ref: P/2001/1937/O (Permission for No. 54A Mill Road)
Applicant: Mrs Therese McEvoy
Proposal: Site for dwelling.
Decision: Permission Granted
Decision date: 07.11.2002

Planning Policies & Material Considerations:

The application has been assessed under:

- The Strategic Planning Policy Statement for Northern Ireland (2015)
- The Banbridge / Newry & Mourne Area Plan 2015
- PPS2 – Natural Heritage
- PPS3 – Access, Movement and Parking
- DCAN15 – Vehicular Access Standards
- PPS21 – Sustainable Development in the Countryside
- The Building on Tradition Sustainable Design Guide will also be considered

Consultations:

Transport NI: advised in a consultation response dated 07/07/16 that a scale plan and accurate site survey at 1:500 shall be submitted as part of the reserved matters application showing the access to be constructed and other requirements in accordance with the attached form RS1.

NI Water: A generic response was received from NI Water dated 30/06/16. NI Water have no objections in principle to this proposal.

Historic Environment Division: stated, in a consultation response dated 08/07/16, that on the basis of the information provided, the proposal is satisfactory to SPSS and PPS6 archaeological policy requirements.

Objections & Representations

Nos. 54, 54A and 55 Mill Road were notified of the application.

One objection was received on 06/07/16.

- The objector argues that there is no substantial and continuously built up frontage at this location, and that No. 52a does not front onto Mill Road. The objector also argues that No. 54 is set back behind the roadside field.
- The objector argues that the proposal would create a ribbon of development.
- The objector argues that the site has no natural screening and is an open and exposed site.
- The objector argues that the proposed dwelling would be unduly prominent, contribute to suburban style build-up and fail to respect the traditional settlement pattern.
- The objector argues that the siting of the proposal is not sympathetic to the special character of the AONB and fails to respect the settlement pattern through the creation of ribbon development.

Consideration and Assessment:

Principle of Development

As there is no significant change to the policy requirements for infill dwellings following the publication of the SPPS, the retained policy of PPS21 will be given accorded weight in determining the principle of the proposal in accordance with paragraph 1.12 of the SPPS. The Banbridge / Newry & Mourne Area Plan 2015 makes provision for up to 2 dwellings in a gap site where it is in accordance with policy CTY8 of PPS21 and other planning considerations and policies.

Policy CTY1 of PPS21 list particular cases in which planning permission will be granted for an individual dwelling house in the countryside. One of these cases is the development of a small gap site within an otherwise substantial and continuously built up frontage in accordance with Policy CTY8.

CTY8 states that, "planning permission will be refused for a building which creates or adds to a ribbon of development." However, an exception will be permitted for the development of a small gap site sufficient only to accommodate up to a maximum of two houses within an otherwise substantial and continuously built up frontage, provided this respects the existing development pattern along the frontage in terms of size, scale, siting and plot size and meets other planning and environmental requirements.

The application site is large enough for one dwelling and would respect the plot size of neighbouring curtilages. There is a dwelling and garage located within the curtilage of No. 54a Mill Road and within the curtilage of No. 54 Mill Road.

CTY8 defines a substantial and built up frontage as a frontage which includes a line of 3 or more buildings along a road frontage without accompanying development to the rear.

The site is located between a dwelling and garage at No. 54A Mill Road, which is adjacent the southern boundary of the site, and the access lane to No. 54 Mill Road, which is adjacent the northern boundary of the site. No. 54 Mill Road sits back 36 metres from Mill Road and adjacent to the north-western part of the application site. The access to No. 54 Mill Road is via Mill Road and the dwelling faces onto Mill Road. However, the dwelling at No. 54 Mill Road is located behind rear boundary of the application site. No. 54 Mill Road cannot, therefore, share a common road frontage with any dwelling on the application site. Therefore, the application site only shares a common road frontage with the dwelling and garage at No. 54A Mill Road.



Application site and No. 54 Mill Road

In relation to this part of Mill Road there is no substantial and continuously built up frontage. The T-junction to the south and the two agricultural fields adjacent to, and north of, No 50 Mill Road provide a significant visual break between No. 54A Mill Road and No. 50 Mill Road. No. 54 Mill Road is set behind the application site. There are no dwellings on western side of Mill Road to the north of the application site. No. 52A Mill Road is set back by approximately 45 metres from the T-junction on Mill Road, and fronts onto the public road which runs west-to-east. No. 52A does not therefore share a common road frontage with Nos.50, 54a or 54 Mill road. Any dwelling on the application site would only have a common road frontage with the dwelling and garage at No. 54A Mill Road. As such any proposed dwelling and garage on the application site would create a ribbon of development.



Application site with No. 54A to the south and No. 54 to the rear of the site

In summary, the application site is not considered a small gap site within a substantial and continuously built up frontage. The proposed dwelling would only share a common road frontage with the dwelling and garage at No. 54A Mill Road. The dwelling at No. 54 Mill Road would be located behind the curtilage of the proposed dwelling.

Integration

CTY13 states that planning permission will be granted for a building in the countryside where it can be visually integrated into the surrounding landscape and is of an appropriate design.

The application site lacks mature vegetation on all boundaries. The boundaries of the application site are defined by wooden post-and-rail fencing or post-and-wire fencing. As such the site lacks a suitable degree of enclosure for any proposed building to integrate into the landscape. Due to the lack of vegetation on the boundaries there are strong critical views of the site when approaching the site from the north and south along Mill Road. The site is an open and exposed site and is unable to provide a suitable degree of enclosure for the proposed dwelling and garage to integrate into the landscape. For these reasons, the proposal is contrary to Policy CTY13 of PPS21.



View of application site from Mill Road

Rural Character

Under CTY14 of PPS21 the application for a dwelling and garage on this site is unacceptable. The proposed dwelling and garage would result in an accumulation of buildings in this open and exposed setting, resulting in suburban style build-up of development. The pattern of settlement exhibited in this area is dispersed single dwellings in the countryside. The addition of a dwelling and garage on the application site would not respect this traditional settlement pattern as it would lead to a build-up of development in this locality and would create a ribbon of development. Therefore, the proposal is contrary to Policy NH6 of PPS2 as the siting of the proposal is not sympathetic to the special character of the Ring of Gullion Area of Outstanding Natural Beauty in general and of this particular locality as it would lead to an erosion of the rural character of this area by reason of build-up of development and the creation of ribbon development.

Recommendation:

The proposal fails to comply with Policies CTY1 and CTY8 of PPS21 as the application site is not considered a small gap site within an otherwise substantial and continuously built up frontage. The site is an open and exposed site and the proposal will erode the rural character of the area and create a ribbon of development. The proposal is therefore contrary to Policies CTY13 and CTY14 of PPS21 and Policy NH6 of PPS2. Therefore, the application is recommended for refusal.

Reasons for Refusal:

1. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland and to Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.

2. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland and to Policy CTY8 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the proposal does not represent a gap site in an otherwise substantial and built up frontage that respects the existing development pattern, and would, if permitted, result in the creation of ribbon development along Mill Road.
3. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland and to Policy CTY13 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the proposed site is unable to provide a suitable degree of enclosure for the proposed dwelling and garage to visually integrate into the surrounding landscape.
4. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland and Policy CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the dwelling would, if permitted, result in a suburban style build-up of development when viewed with existing and approved buildings and would therefore result in a detrimental change to the rural character of the countryside.
5. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland and Policy CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the dwelling would not, if permitted, respect the traditional pattern of settlement exhibited in that area and create a ribbon of development and would therefore result in a detrimental change to the rural character of the countryside.
6. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland and Policy NH6 of Planning Policy Statement 2 in that the siting of the proposal is not sympathetic to the special character of the Area of Outstanding Natural Beauty in general and of the particular locality.

Case Officers signature: _____

Authorised Officers Signature: _____

Ref: Newry Mourne and Down Council Meeting

Date 22nd September 2016

Dear Colette,

RE: Written Submissions for Council Meeting dated 28th September 2016

- **P/2016/0557/F**
- **LA07/2016/0602/O**
- **LA07/2016/0812/O**

Please see below written submissions for the above three planning applications.

P/2016/0557/F

We disagree with the single reason (CTY13) for refusal because the proposal is:

- (a) compliant with countryside development and is appropriate for the site and its locality;
- (b) It will visually integrate as the dormers and materials are consistent with that already found in the area;
- (c) The design of this retrospective application is not significantly different from that which is approved under P/2015/0186/RM.

LA07/2016/0602/O

We disagree with below three reasons for refusal because we feel that:

- (a) CTY8 – This is a gap site (between no's 8 and 16) within a substantial and continuously built up frontage comprising of no's 4, 6, 8, 15, 16 and 20 Goragh Road;
- (b) CTY15 – This proposal will not result in urban sprawl as it is flanked on both sides by residential development (no's 16 and 20 to the east and no's 6 and 8 to the west);
- (c) CTY1 – This development is consistent with CTY 8 and therefore not an "other type of development". This application is a 'gap' site development' and satisfies CTY1. As such, we feel this is therefore a redundant refusal reason.

LA07/2016/0812/O

We disagree with all six reasons for refusal because we feel that:

- (a) CTY1 – This development is consistent with CTY 8 and therefore not an "other type of development". This application is a 'gap' site development' and satisfies CTY1. As such, we feel this is therefore a redundant refusal reason.
- (b) CTY8 - This is a gap site (between no's 54 and 54a within a substantial and continuously built up frontage comprising of no's 50, 52a, 54a and 54 Mill Road. There is already a series of properties in succession along this road and this proposal will not create ribbon development here;
- (c) CTY13 and CTY 14 – We disagree that this proposal cannot provide a suitable degree of enclosure nor will it result in sub-urban style build-up of development. The sites position among the surrounding properties is almost identical to that of a similarly positioned proposal P/2014/0564/O approved by Newry, Mourne and Down Council on 23rd October 2015 (attached).

Ref: Newry Mourne and Down Council Meeting

- (d) NH6 –The siting of this proposal is entirely consistent with surrounding existing properties and will therefore not visually impact on the AONB or the locality.

Please contact me if you have any queries.

Yours sincerely



Sarah McDowell MRTPI (sarah@resolveplanning.com)
Senior Planner
Resolve Planning & Development



Liam Hannaway
Chief Executive



Comhairle Ceannair
an Iúir, Mhúrn
agus an Dúin
**Newry, Mourne
and Down**
District Council

OUTLINE PLANNING PERMISSION

Planning Act (Northern Ireland) 2011

Application No: **P/2014/0564/O**

Date of Application: **26th June 2014**

**Between nos. 27 and 31 Barr Road
Belleeks
Newry
BT35 7QD**

Site of Proposed
Development:

Description of Proposal: **Erection of Dwelling with Domestic Garage (Amended P1 Form)**

Applicant: **Mr and Mrs Leo McParland**
Address: **39a Barr Road
Belleeks
Newry
BT35 7QD**

Agent: **Collins and Collins**
Address: **18 Margaret Street
Newry
BT34 1DF**

Drawing Ref: **01 (REV 3)**

Council in pursuance of its powers under the above-mentioned Act hereby

GRANTS OUTLINE PLANNING PERMISSION

for the above-mentioned development in accordance with your application subject to compliance with the following conditions which are imposed for the reasons stated:

1. As required by Section 62 of the Planning Act (Northern Ireland) 2011, application for approval of the reserved matters shall be made to the Council within 3 years of the date on which this permission is granted and the development, hereby permitted, shall be begun by whichever is the later of the following dates:-
 - i. the expiration of 5 years from the date of this permission, or
 - ii. the expiration of 2 years from the date of approval of the last of the reserved matters to be approved.

**Óifig an Iúir
Newry Office**
O'Hagan House
Moaghaghan Row

**Óifig Dhún Pádraig
Downpatrick Office**
Downshire Civic Centre
Downshire Estate, Ardross Road

0300 013 2233 (Council)
0300 200 7830 (Planning)
council@mrnandd.org

Frestal ar an Dúin
agus Ard Mhacha Theas
Serving Down

Reason: Time Limit

2. Except insofar as expressly conditioned below, approval of the details of the siting, design and external appearance of the buildings, the means of access thereto and the landscaping of the site (hereinafter called "the reserved matters"), shall be obtained from the Council, in writing, before any development is commenced.

Reason: To enable the Council to consider in detail the proposed development of the site.

3. Full particulars, detailed plans and sections of the reserved matters required in Conditions 01 and 02 shall be submitted in writing to the council and shall be carried out as approved.

Reason: To enable the council to consider in detail the proposed development of the site.

4. The proposed dwelling shall have a ridge height of less than 6 metres above finished floor level.

Reason: To ensure that the development is satisfactorily integrated into the landscape.

5. The depth of underbuilding between finished floor level and existing ground level shall not exceed 0.45 metres at any point.

Reason: In the interest of visual amenity.

6. No development shall take place until a plan indicating floor levels of the proposed dwelling in relation to existing and proposed ground levels has been submitted to and approved by the council.

Reason: To ensure the dwelling integrates into the landform.

7. All hard and soft landscape works shall be carried out in accordance with the approved details and the appropriate British Standard or other recognised Codes of Practice. The works shall be carried out at the first available planting season upon occupation of the dwelling.

Reason: To ensure the provision, establishment and maintenance of a high standard of landscape.

8. If within a period of 5 years from the date of the planting of any tree, shrub or hedge, that tree, shrub or hedge is removed, uprooted or destroyed or dies, or becomes, in the opinion of the Council, seriously damaged or defective, another tree, shrub or hedge of the same species and size as that originally planted shall be planted at the same place, unless the Council gives its written consent to any variation.

Reason: To ensure the provision, establishment and maintenance of a high standard of landscape.

9. A scale plan at 1:500 shall be submitted as part of the reserved matters application showing the access to be constructed in accordance with the attached form RS1.



Reason: To ensure there is a satisfactory means of access in the interests of road safety and the convenience of road users.

Informatives

Environmental Health Informatives

Should the development proceed, then consent to discharge under the Water Order 1999 shall be required. A Water Order Consent application form can be obtained by applying to Water Management Unit, Calvert House, 17 Antrim Road, Lisburn, Co. Antrim, BT28 3AL.

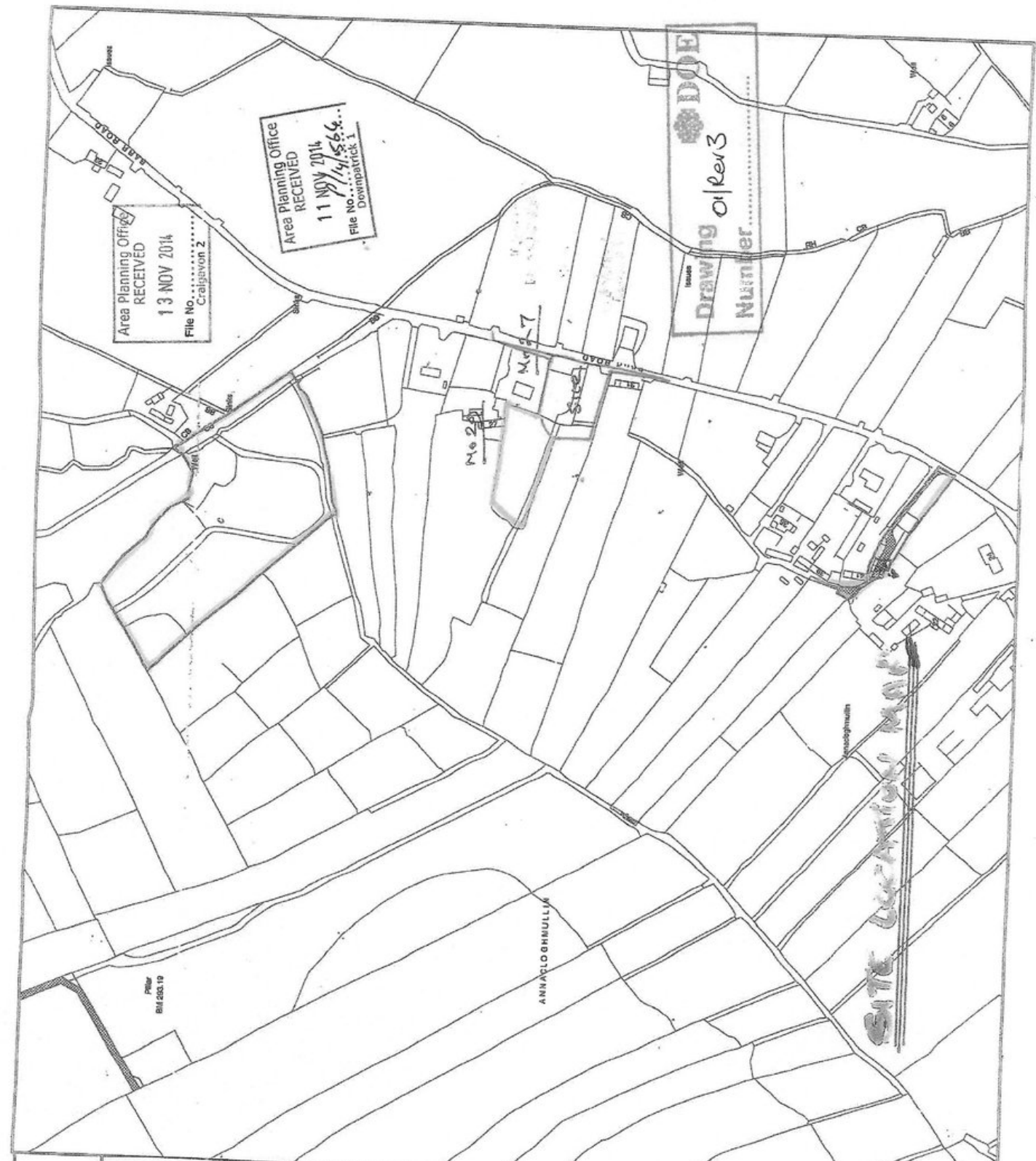
The applicant is to be advised that no work should be undertaken until such is approved. The applicant must ensure that sufficient land is, and will be, available in the final development to accommodate septic tank and effluent tank and effluent dispersal system. To achieve this, the applicant should engage the service of a suitably qualified person.

Energy efficiency and renewable energy:

Applicants should be encouraged to consider the use of renewable energy and energy efficient materials and fittings in association with this development.

Dated: 23rd October 2015 Authorised Officer _____

Handwritten signature



Land & Property Services
THE LAND REGISTRY

Date: 10/11/2014
County: Armagh
Scale: 1:2500
Our Ref: 11/14/566
Your Ref: 2011/11/205115W
Map Ref: 2011/11/205115W

Revised 7/5/14

Prepared by: SAUL BAO
Checked: HENRY C. DOWN
By: ALAN L. McARDLE

Collins & Collins
Architectural & Development Consultants
18 MARGARET STREET
NEWRY, CO. DOWN, BT34 1DF
Tel: 028 302 66602 Fax: 028 302 60467

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|------------------------|---|--------------------|--|----------------------|
| ITEM NO | 45 | | | |
| APPLIC NO | P/2014/0071/F | Full | DATE VALID | 1/17/14 |
| COUNCIL OPINION | APPROVAL | | | |
| APPLICANT | Mr John Perry C/O Agent | AGENT | Jobling Planning & Environment Ltd. 1 Inverary Valley Larne BT40 3BJ 028 2827 7736 | |
| LOCATION | Lands South East of No. 54 Newcastle Street Kilkeel BT34 4AQ | | | |
| PROPOSAL | Change of use to part of commercial (pre-cast concrete works) yard to a waste management facility for the depollution and dismantling of End of Life Vehicles (ELVs) and the sorting and bulking of scrap metal. Works will include the use of existing vehicle workshop for the ELV depollution process, external storage of ELVs (unpolluted and polluted) and erection of walled enclosure for storage of non-ferrous scrap metal, roofing of existing enclosure for the storage of ferrous metals, bunded fuel storage, and associated boundary treatments. | | | |
| REPRESENTATIONS | OBJ Letters | SUP Letters | OBJ Petitions | SUP Petitions |
| | 33 | 1 | 0 | 0 |
| | Addresses Signatures | | | |
| | 0 | 0 | 0 | 0 |



Comhairle Ceantair
an Iúir, Mhúrn
agus an Dúin

**Newry, Mourne
and Down**
District Council

Application Reference: P/2014/0071/F

Date Received: 18th January 2014

Proposal: Change of use to part of commercial (pre-cast concrete works) yard to a waste management facility for the depollution and dismantling of End of Life Vehicles (ELVs) and the sorting and bulking of scrap metal. Works will include the use of existing vehicle workshop for the ELV depollution process, external storage of ELVs (unpolluted and polluted) and erection of walled enclosure for storage of non-ferrous scrap metal, roofing of existing enclosure for the storage of ferrous metals, banded fuel storage, and associated boundary treatments.

Location: Lands South East of No. 54 Newcastle Street, Kilkeel, BT34 4AQ

Site Characteristics & Area Characteristics:

The site is south east of No. 54 Newcastle Street, Kilkeel and is accessed by an avenue between No. 56 Newcastle Street and an existing petrol filling station. This is a narrow avenue taking you in a south easterly direction off Newcastle Street to an existing concrete yards/works. This yard is approximately three metres above the land to the north. The land to the west and south is at a higher level.

Upon entering the yard there is an existing office building to the east and hoppers along the north west. There is then a large building that is used to produce the precast products located within the centre of the yard. The southern third of this building is a workshop and this and the land beyond it to the SE is within the site outlined in red. The land is flat and currently has a concrete surface.

The site is enclosed along the southern boundary by whin bushes, the northern and western boundaries are not defined. The eastern boundary is not defined however there is a row of concrete blocks in piles along this boundary.

The area is within the Development Limits for Kilkeel and lies just off Newcastle Street. The site is to the south east of Local Landscape Policy Area KL 33 whose features are a large house and gardens (No. 54 Newcastle Street). It is within the Mournes and Slieve Croob Area of Outstanding Natural Beauty.

To the south east of the site there is the existing sewage works and a factory for processing fish. The entrance to the site runs along the boundary with Alexandra Drive, a cul-de-sac of semi-detached two storey dwellings and a filling station.



Site History:

The use of the yard for making concrete blocks was approved under application P/1977/0713 on 22.09.1977. The existing shed on the site for pre-cast concrete manufacturing was approved under application P/1981/0982 on 15.03.1982. The planning history demonstrates that the existing use as a commercial yard is established.

Planning Policies & Material Considerations:

- The Strategic Planning Policy Statement for Northern Ireland (SPPS)
- Banbridge, Newry & Mourne Area Plan 2015
- PPS2 – Natural Heritage
- PPS3 – Access, Movement & Parking
- DCAN15 – Vehicular Access Standards
- PPS11 – Planning and Waste Management

Consultations:

Consultations were carried out with Environmental Health, TransportNI, NIEA Water Management Unit, NIEA Land and Resource Management Unit.

Environmental Health - have not received any complaints regarding noise associated with the overall site. The dwellings in the vicinity benefit from some screening from the site due to topography and layout. Therefore in view of the proposed end use being a facility dealing with ELV Scrap Metal, Environmental Health would have no objections to the proposed development.

Roads Service have no objection following the receipt of the revised P1 form in particular the traffic figures.

NIEA: WMU have no objections in principle to this proposal providing all the relevant statutory permission for this development are obtained.

NIEA: LRM Unit have no objections.

Objections & Representations:

The application was advertised in local newspapers on 28th March 2014, 27th June 2014, 21st October 2015 and 4th November 2015. 30 neighbouring properties were notified of the proposal in the initial round of consultation on 14th March 2014. Subsequent notifications were sent to neighbours and objectors on 17th June 2014 and 19th October 2015. Objections were received from a total of 26 properties in the surrounding area (most of which were copies of the same letter template), as well as from Mr Jim Wells MLA and Gordon Bell and Son Solicitors on behalf of an adjacent landowner (Bannerville Developments Ltd.)

The main issues raised in the letters of objection were noise impact, effect on property values, that a full EIA was not undertaken, potential pollution of harbour area, additional traffic generated, sub-standard entrance, and use unsuitable within a residential area. The correspondence from the solicitor centres on land ownership, specifically, whether the owners of the site had the right to access the site over his clients' property.

A noise assessment was undertaken by Lester Acoustics and submitted with the application. This found that the normal operations of the plant will not exceed recommended noise levels and this was accepted by Environmental Health. They have recommended mitigation conditions regarding operating hours and activity when the baler is present on site to ensure no unacceptable impacts on residential amenity. Therefore this concern cannot be given determining weight. Effects on the value of private property are not a material planning consideration. The proposal is of a relatively small scale as these facilities go and appropriate mitigation measures will be employed to ensure no pollution of the surrounding environment (including use of bunded tanks and interceptors in drains). The point of the facility is to reduce the risk of pollution by properly depolluting and disposing of the end of life vehicles. Following consultation with statutory bodies, a request for a full Environmental Statement could not be justified as the relevant matters can be assessed through the normal application process. Following clarification on the level of traffic to be attracted to the site, TransportNI has no road safety concern with the use of the existing access from Newcastle Street. The site has an established industrial use and is considered suitable for the proposal given the separation distances from residential properties (over 50m).

With regard to the matter of land ownership, the planning authority wrote to the agent concerning the challenge to the P2 certificate. The agent provided a solicitor's letter with accompanying title documents and a map to show that the applicant has an easement over the objector's site for use of the lane. Notice was served on the owner of the land on 10th September 2014 and an amended P2 certificate C was submitted on 11th September 2014. The Council is satisfied that the challenge to the ownership has been addressed, that the applicant controls the land necessary to carry out the development, and that the interested parties have had the chance to have their say. TransportNI was consulted and there was no change to their position. Any further disputes on the issue are a civil matter between the parties, but the planning application cannot be further held. Further correspondence was received

from Gordon Bell and Son Solicitors alleging inconsistency in the approach adopted by TransportNI on another application by their client using the same laneway. The Council is satisfied that each application is assessed on its own merits having regard to the circumstances of the proposal, policy requirements and consultee advice. As this application is considered acceptable (as indeed was the other one referred to – P/2014/0664/F), there is no prejudice and the application should be determined without further delay.

Consideration and Assessment:

The main issues to be considered are the principle of the waste management use proposed, visual issues associated with the storage of waste on the site, road safety and impacts on amenity.

The proposal exceeded the threshold of Category 11(E) of Schedule 2 of the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2012. The previous planning authority was required under Regulation 10 to make a determination as to whether the proposal was for EIA development. Following the receipt of a number of consultation responses, it was determined on 16th April 2014 that an Environmental Statement would not be required as the environmental effects were not likely to be significant and could be assessed through the normal planning process.

Section 45 of the Planning Act (Northern Ireland) 2011 requires the Council to have regard to the local development plan, so far as material to the application, and to any other material considerations. The site is currently within the remit of the Banbridge / Newry & Mourne Area Plan 2015 as the new council has not yet adopted a local development plan. The site is located within the settlement limit of Kilkeel, and is unzoned. There are no specific policies in the Plan that are relevant to the determination of the application and the application will be assessed against the operational policies of the SPPS and the retained PPS11.

Sustainable waste management is essential for the health and well-being of society, and our quality of life. The waste management industry is an important provider of jobs and investment across the region, with the potential to support future business development, investment and employment. The provision of waste facilities and infrastructure can make a valuable contribution towards sustainable development. The aim of the SPPS in relation to waste management is to support wider government policy focused on the sustainable management of waste, and a move towards resource efficiency. This proposal aims to sustainably manage waste by de-polluting and recycling end of life vehicles.

With regard to site selection, the planning authority will be guided by paragraph 6.313 of the SPPS which replicates much of the retained policy WM2 of PPS11. A suitable site must meet one or more of the five locational criteria. This site is considered to meet at least two of these criteria. It is located within an existing industrial area with an established use as a commercial yard. The pre-cast concrete works will remain in the western part of the yard and the development proposal will share a similar character with this existing use. It also makes use of previously developed land and will make use of part of an existing building. The Minister for the

Environment issued a statement in November 2013 to state that Best Practicable Environmental Option (BPEO) was no longer a material planning consideration following the publication of the revised Waste Management Strategy. The SPPS confirms at paragraph 6.323 that this remains the case. Therefore there is no requirement to demonstrate need for the facility provided it meets the locational criteria.

The environmental impact of the waste management facility must be assessed under paragraph 6.321 of the SPPS and policy WM1 of PPS11. The volume and tonnage of ELVs to be processed on the site has been specified in the supporting statement and the recycling of much of the material recovered is to be welcomed. Key consultees have no concerns regarding the type or volume of waste or the method of disposal. The proposal will not cause demonstrable harm to human health or result in an unacceptable adverse impact on the environment. The principal concern for residential amenity would be noise arising from the site. A noise assessment was undertaken by Lester Acoustics and submitted with the application. This found that the normal operations of the plant will not exceed recommended noise levels and this was accepted by Environmental Health. It is intended that a mobile baler will be brought onto the site either quarterly or monthly when there is sufficient volume of waste to be baled and removed. As this process would create additional noise on the particular days when it is present, Environmental Health have recommended mitigation conditions restricting the other machinery that can operate concurrently to a single excavator. They have also recommended restricted operating hours of 9am – 5pm Monday to Friday and 9pm – 2pm on Saturday to ensure no unacceptable impacts on residential amenity. Measures have been taken to ensure that in the event of a spill, there is no risk of pollution of the surrounding environment. This includes a detailed drainage plan, the use of an interceptor and bunds around storage tanks. Water Management Unit is content with the measures proposed. While it is acknowledged that there are residential areas beyond the site (principally off Newcastle Street and Rooney Road), the primary character of this area is commercial and industrial. The site's established use is as a concrete works while there is a sewage works and factories to the SE and a former sale yard and joinery works to the NW. The proposed use is considered compatible with these land uses. Its visual impact is mitigated by its depressed landscape setting and the screening provided by existing industrial development on the site. There are limited public views of the site and the proposed volume of outside storage is limited. Therefore the proposal will not harm the townscape of this part of Kilkeel, or the landscape quality of the Mourne AONB as required by PPS2 policy NH6. There will be no effects on archaeological or built heritage interests and no changes to flood risk. There will be no loss of agricultural land and no risk to air, water or soil resources.

The traffic assessment form in the planning statement submitted by the agent states that the proposal involves the processing of 5,400 tonnes of waste per annum. This equates to 19 tonnes into the site and 1 No. removal trip from the site per day. Overall this proposal will generate 10 No. two-way trips to/from the site on a daily basis. Vehicle types to and from the site will consist of 2 No. vehicles used by staff members and 4 No. HGVs for the traffic movement of waste deliveries to the site. The agent has subsequently submitted an amended P1 form which has shown that there are 2 staff vehicles, 10 visitor/customer vehicles and 15 good vehicles attending the premises daily and that this will not increase for this proposal.

TransportNI initially felt that the proposal was an unacceptable intensification of use of the existing access, but following a meeting and receipt of the amended P1 form with clarification on the existing level of traffic using the laneway, they are now content that there will be no intensification. They have no road safety concerns under PPS3 or DCAN15 with the existing access point and the nature and frequency of traffic movements associated with the proposed use. As there will be a reduction in the use of the concrete plant, the new use should result in less dirt and dust nuisance at adjoining properties. There is adequate space within the site for parking and circulation of vehicles.

In summary, the proposal has been found to comply with the relevant policies, is appropriately sited and will not harm the environment, residential amenity or other interests of acknowledged importance. The concerns raised by objectors have been fully assessed and cannot be given determining weight.

Recommendation: Approval

Conditions:

1. The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.

Reason: As required by Section 61 of the Planning Act (Northern Ireland) 2011.

2. The storage areas/facility shall only be for the use of the ELV depollution process and associated recycling of components.

Reason: To prevent other waste being brought onto the site.

3. No machinery shall be operated, no process shall be carried out and no deliveries taken at, or dispatched from the site outside the following times:
 Monday to Friday 9am – 5pm
 Saturday 9am – 2pm
 nor at any time on Sundays, Bank or Public Holidays.

Reason: To safeguard the living conditions of residents in adjoining and nearby properties.

4. At times when the Baler is operating on site only one Excavator shall be permitted to operate.

Reason: To ensure that acceptable noise levels are not exceeded at nearby residential properties.

Case Officer Signature:

Date:

Appointed Officer Signature:

Date:

Item 57 – Submission of objection

Re: Request for Speaking Rights - P/2014/0071/F - Item 57 on the agenda

wesley mcmurray to Colette.McAteer@nmandd.org

The points I would like to raise are as follows and are not the totally inclusive as I will want to include photos etc. and perhaps other items as well.

The main reason for our opposition to this proposal is the fact that having more and more vehicles gaining access to this property directly adjacent to the driveway to our home, & will create more of nuisance to us who live adjacent to this lane. At the moment access to this property has and is causing damage to our dividing wall and vehicles endeavouring to gain entry are having to swerve onto the oncoming traffic lane and this has already caused damage to a parked car across from this entrance. Also, has the current owner even looked at obtaining an alternative route into their establishment (as we residents were informed that there is a way to gain access via the harbour entrance) and thus have a safer and better way to conduct their business.

To show how flexible we have been, when this business originally opened we the residents gave the owner then over three foot of our dividing wall to enable them better entry. We also have to endure the 'bad look' to our driveway entrance, as a lorry knocked down our lovely brick pillar and neither the previous or new owners have reinstated it! We also have to endure the constant dust kicked up by the big lorries and we surely don't want to be increased!

As this is mostly a residential area we our concerned that if this is given the go ahead it could lead to a devaluation of our home property.

Best regards,

William McMurray



GORDON BELL & SON
S O L I C I T O R S

9 - 11 Newry Street, Rathfriland, Co. Down, BT34 5PY
T: 028 4063 0248 F: 028 4063 1016 E: info@gordonbellandson.co.uk

74

Our Ref: DB/JQ/5920F

Your Ref:

21st September 2016

Democratic Services
Newry, Mourne and Down District Council
Local Planning Office
O'Hagan House
Monaghan Row
Newry
BT35 8DJ

SENT VIA EMAIL ONLY: democratic.services@nmandd.org

Dear Sir,

Formal request to speak about the application listed below at the 28 September 2016 meeting of the Planning Committee

Planning reference: P/2014/0071/F

Proposal: Change of use to part of commercial (pre-cast concrete works) yard to a waste management facility for the depollution and dismantling of End of Life Vehicles (ELVs) and the sorting and bulking of scrap metal. Works will include the use of existing vehicle workshop for the ELV depollution process, external storage of ELVs (unpolluted and polluted) and erection of walled enclosure for storage of non-ferrous scrap metal, roofing of existing enclosure for the storage of ferrous metals, banded fuel storage, and associated boundary treatments

Location: Lands South East of No. 54 Newcastle Street Kilkeel BT34 4AQ

I refer to the above application which appears on page 46 of the Planning Schedule which will be considered at the Planning Committee Meeting due to be held on 28 September 2016.

I am the solicitor for an adjoining business and I submitted correspondence dated 3rd September 2014, 18th September 2014, 28th September 2015, 23rd October 2015 and 16th February 2016 while the application was being considered.

In keeping with the '*Planning Committee Operating Protocol*' I wish to arrange an appearance before the committee to present information on behalf of my client.

The information which I wish to present is set out below.

Please confirm that my request to appear before the Committee has been granted.

David J.G. Beil LL.B. | William V. McMurray LL.B.

Also at 11A Bridge Street, Kilkeel, Co. Down. Tel: (028) 4176 4857 (Tuesday Afternoons)
and 1 Rampart Street, Dromore, Co. Down. Tel: (028) 9269 8066 (Wednesday Afternoons)
www.gordonbellandson.co.uk

INFORMATION WHICH I WISH TO PRESENT TO THE COUNCIL

As per correspondence dated:

- 1. 3rd September 2014,**
- 2. 18th September 2014,**
- 3. 28th September 2015,**
- 4. 23rd October 2015,**
- 5. 16th February 2016.**
- 6. Photographs as attached.**

Yours faithfully

Gordon Bell & Son.

Encs.



GORDON BELL & SON
SOLICITORS

9 - 11 Newry Street, Rathfriland, Co. Down, BT34 5PY
T: 028 4063 0248 F: 028 4063 1016 E: info@gordonbellandson.co.uk

DB/JQ/5920F

Your Ref:

3rd September 2014

Southern Area Planning Office
Marlborough House
Central Way
CRAIGAVON
BT64 1AD

Dear Sirs,

Re: Planning application P/2014/0071/F
Our Client: Bannerville Developments Limited

We refer to the above application and to your letter of 27 August 2014.

Our client has not yet received the notification required by Article 22 of the Planning (NI) Order 1991, however, we have been instructed to make the Department aware of the situation regarding access to the site which is the subject of planning application reference P/2014/0071/F.

The lane way from Newcastle Street to the site which is the subject of planning application reference P/2014/0071/F runs through our client's land. The 'Right of Way' to the subject site is restricted to the width of the existing lane way until it meets the public footpath where it splays very slightly across our client's frontage towards the junction of Mill and Newcastle Roads. Attached is a copy of the Land Registry map of folio DN141910 Co. Down which is owned by our client. The "Right of Way" is indicated with blue hatching and you will note that almost all of the easement is registered over the public roadway at Newcastle Street and in fact grants rights over only a small portion of our clients folio.

As can be seen from the damage to the surface of our client's forecourt the narrowness of the lane way where it joins Newcastle Street forces vehicles to encroach on the forecourt as they turn into the lane way.

Our client has never consented to vehicles encroaching on its land. In fact, our client intends to totally enclose and secure its land, and through planning application reference P/2014/0664/F has sought permission to do so. However, even before our client's application is approved all vehicles entering the lane way which serves the site which is the subject of planning application P/2014/0071/F will be prevented from encroaching

on its land. Encroachment will, of course, be permanently stopped when our client carries out the works proposed in planning application reference P/2014/0664/F.

The information contained in this letter is clearly highly material to the Department's decision on planning application reference P/2014/0071/F and therefore, we would ask the Department to forward this letter to Transport NI and ask Transport NI to review their position on planning application reference P/2014/0071/F in light of the contents hereof. We would further request that the Department reassesses planning application reference P/2014/0071/F when the comments received from Transport NI are available.

Please acknowledge safe receipt of this letter.

Yours faithfully

A handwritten signature in black ink, appearing to be 'J. Bell', followed by a period.

DB/JQ/5920F

18th September 2014

Southern Area Planning Office
Marlborough House
Central Way
CRAIGAVON
BT64 1AD

Dear Sirs,

Re: Planning application P/2014/0071/F
Our Client: Bannerville Developments Limited

We refer to the above planning application and note that Hoy and Dorman Ltd, acting on behalf of the applicant, has, by letter dated 10 September 2014 informed the Department that they intend to submit a map showing the extent of the easement enjoyed by the applicant.

Clearly, given our clients title, it is important that we are provided with an opportunity to comment on the map Hoy and Dorman Ltd intend to submit.

Please ensure that both our client and this office are alerted when Hoy and Dorman Ltd furnish the Department with the map referred to in their 10 September 2014 letter.

Yours faithfully

DB/SR/5920/F

28th September 2015

Mr Anthony McKay
Chief Planning Officer
Newry, Mourne & Down District
Council,
Downshire Estate
Ardglass Road
DOWNPATRICK
BT30 6GQ

Dear Sir

PLANNING REFERENCE: P/2014/0071/F – SOUTH EAST OF 54 NEWCASTLE STREET, KILKEEL, CO DOWN

We refer to our letters of 3rd September 2014 and 18th September 2014 regarding the above planning application. Both letters are on the Planning Portal NI file on the subject application.

In our letter of 3rd September 2014 we pointed out that the laneway which serves the proposed development runs through our client's land. DOE NI, the then planning authority, wrote to Hoy Dorman, the applicant's agent, requesting confirmation that the applicant owned all of the site outlined in red on the map submitted with the application. Hoy Dorman, by letter dated 10th September 2014, indicated that they would submit a map which would show their client's easement.

We wrote again on 18th September 2014 and referred to Hoy and Dorman's intention to provide an easement map. Our letter also stressed the need to ensure that our client was notified when the easement map was submitted and he be given an opportunity to examine it and make representations.

Our client has not been notified of any easement map or other new information being submitted by or on behalf of the applicant, yet the Council appears to have purported to decide that the application can be approved. This raises a number of questions.

Firstly, if an easement map or other information has been submitted, our client has not been informed and therefore has been deprived of his legal right to examine it and make representations.

Secondly, if no easement map or other information has been submitted then we cannot understand how clarification of ownership could be required and then, in the absence of any clarification, a decision could be taken to approve without ownership being clarified.

If the first scenario is correct then the Council is in breach of its statutory duty which requires it to ensure that those with an interest in land which is the subject of a planning application are provided with an opportunity to make representations on any relevant information regarding that land.

If the second scenario is correct then the Council has acted in a totally unreasonable manner in that it was originally decided (rightly), that ownership needed to be clarified then this requirement was ignored and the Council decided it could approve the application without clarifying ownership.

We now require the Council to immediately confirm in writing that:-

- The application will be held until the Council confirm if a map or other information regarding ownership has, or has not, been received and,
- If a map or other information has been received the application will be held and reconsidered when our client has examined and made representations on the map or any other information which may have been received, and
- If no map or other information has been received the Council explain by return how it could ignore the original request for clarification regarding ownership and decide that the application could be approved without the required clarification.

We note that the issue of ownership is not considered in the Case Officer's Report on the Planning Portal NI.

We await hearing from you as a matter of urgency and in the event that the Council proceeds to purport to approve this application without fully addressing the issues raised in this letter our client reserves the right to commence such Legal Proceedings as may be required to protect his position and to ensure compliance by the Council with its statutory duties. Should such proceedings be required this and previous correspondence will be produced to the Court and furthermore the costs of any legal action sought against the Council.

Yours faithfully

cc. Mr Anthony McKay, Newry Mourne & Down District Council, Council Offices, Monaghan Row, Newry, Co Down

cc. Mr Liam Hannaway, Newry Mourne & Down District Council, Downshire Estate, Ardglass Road, Downpatrick, BT30 6GQ

DB/JQ/5920F

23rd October 2015

Mr Anthony McKay
Chief Planning Officer
Newry, Mourne & Down District Council
Council Offices
Monaghan Row
Newry
Co Down

Dear Sir,

**Re: Planning Ref: P/2014/0071/F – South East of 54 Newcastle Street, Kilkeel,
Co. Down**

I refer to the above application and our letter of 28th September 2015.

I note from the Planning Portal NI (PPNI) that a document referred to as a 'Transfer Document' was posted online on 6 October 2015. I further note that while the 'Transfer Document' was submitted along with a letter from C Murnion and Co Solicitors dated 9 October 2014, the PPNI records the date of receipt as 6 October 2015.

Having examined the 'Transfer Document' we would point out that the applicant has no legal entitlement to cross our client's forecourt when entering the subject lane. Furthermore, our client has now begun preparing to implement the development which he obtained planning approval for under reference P/2014/0664/F on 7 August 2015. This approval permits the erection of a 1 metre high permanent metal post to support a 6 metre wide hinged barrier. The approved metal post is located on the 'out of town' side of the subject lane at the point where the lane abuts the footway. The erection of this post will prevent vehicles crossing our client's forecourt when entering the subject lane.

It is clearly important that the Council sends a copy of this letter to Transport NI and takes into account Transport NI's response when it reconsiders application P/2014/0071/F

Yours faithfully

DB/JQ/5920F

16th February 2016

Planning Manager
Newry, Mourne and Down District Council
Local Planning Office
O'Hagan House
Monaghan Row
Newry
BT35 8DJ

Dear Sirs,

Our client: Mr R Sloan

Application reference: P/2014/0071/F

Location: Lands South East of No. 54 Newcastle Street, Kilkeel, BT34 4AQ

Proposal: Proposed change of use to part of commercial (pre-cast concrete works) yard to a waste management facility for the depollution and dismantling of End of Life Vehicle (ELVs) and the sorting and bulking of scrap metal. Works will include the use of existing vehicle workshop for the ELV depollution process, external Storage of ELVs (unpolluted and polluted) and erection of walled enclosure for storage of non-ferrous scrap metal, roofing of existing enclosure for the storage of ferrous metals, bunded fuel storage, and associated boundary treatments.

I refer to the above application and to my previous letters dated 28th September 2015, 23rd October 2015.

Transport NI (TNI) replied to your re-consultation on application P/2014/0071/F on 8 December 2015 (copy enclosed). The heading on TNI's reply refers to our letter.

In its response, TNI has indicated that it has no objections to application P/2014/0071/F provided the information submitted is accurate.

When our client's application (reference P/2014/0664/F) to replace 2 existing car wash machines and erect a new boundary wall, gated entrances, removable bollards and shelter for car wash staff, was under consideration, TNI indicated that a 6m entry/exit radius was required at the existing lane. It was stated that the 6m radius was required to ensure adequate pedestrian protection and enhance traffic progression (see enclosed response dated 15 December 2014).

The laneway referred to by TNI in its 15 December 2014 response is the laneway which

serves the P/2014/0071/F proposal.

After considering our clients application for 12 months, the Council approved it. However, the presence of a 1 metre high barrier support at the entrance to the lane means that the 6m entry/exit radius required by TNI cannot be provided. From TNI's 8 December 2015 response on application P/2014/0071/F we now know that it is content with this proposal, even though the required 6m radius at the existing lane can no longer be provided.

In short, TNI's demand for 6m entry/exit radius at the entrance to the lane delayed our client's consent by nine months, yet, TNI is now prepared to support the P/2014/0071/F proposal, which uses the same lane, even though the previously required 6m radius cannot be provided.

Transport NI is the statutory authority charged with responsibility for ensuring that pedestrians and road users' safety is not compromised by development. It is therefore difficult to understand how TNI could regard a 6m radius at the entrance to the subject lane to be essential when considering our client's application but not a requirement when responding to application P/2014/0071/F, which uses the same lane.

The safety of pedestrians and road users is an important consideration when assessing application P/2014/0071/F, therefore, we contend that the Council must ask TNI to explain why it no longer requires a 6m radius at the entrance to the lane.

Yours faithfully

Encs.

C.C. Mr W N R Laughlin, Transport NI, Downpatrick









1/20/14/00117F

Submitted to Council 28-09-16
C/o Colette McAteer.



Scrap Metal

Scrap Vehicles

Scrap Metal

one of two Containers filled already

Scrap Metal already collected

Statement to be presented Planning Committee 28th September 2016

RE: P/2014/0071/F for Mr John Perry

Proposal: Change of use to part of commercial (pre-cast concrete works) yard to a waste management facility for the depollution and dismantling of End of Life Vehicles (ELVs) and the sorting and bulking of scrap metal. Works will include the use of existing vehicle workshop for the ELV depollution process, external storage of ELVs (unpolluted and polluted) and erection of walled enclosure for storage of non-ferrous scrap metal, roofing of existing enclosure for the storage of ferrous metals, bunded fuel storage and associated boundary treatments.

Lands at: Lands South East of No. 54 Newcastle Street, Kilkeel

Speaker: Gemma Jobling
JPE Planning

Agent acting on behalf of
applicant, Mr John Perry, J
Perry & Sons

On behalf of my client, the applicant, J Perry & Sons thank you for the opportunity to address the Committee.

We welcome the Planning Officer's recommendation to approve this application. We firmly believe this proposal fully accords with planning policy and is respectfully designed to fit within the local context. We are in attendance today to answer any questions or concerns the Committee may have in respect of the proposal. We don't wish to repeat the synopsis provided by your planning officers; instead we would like to highlight the key benefits of this proposal for the local area and address concerns raised by the objectors to the scheme.

J Perry & Sons- Well Respected Family Business

The applicant, J Perry & Son is a very well respected and long established local family business in Kilkeel with strong ties to the local community. This subject proposal

is to be operated by this established family business and will contribute the existing portfolio business operated by the firm.

This family business started in 1926, some 90 years ago with the coal business. Some 30 years ago the business diversified into supplying home heating oil to the town and the district. The business then acquired the subject site, from 'Kilkeel Concrete Company' in 2013. They took over this business as a going concern and continue to operate 'Kilkeel Concrete' at this site producing concrete blocks on the site.

The wider family business employs over 20 people in the town and have sustained these jobs in recent difficult times. The business regularly contributes to local community events, such as sponsoring local football teams and events at the Mourne Golf Club.

Diversification & Growth of Existing Business

This proposed development seeks to further diversify the family business to include a waste facility for reclamation of vehicle parts from end of life (scrap) vehicles. This will operate alongside the existing 'Kilkeel Concrete' business.

This application will utilise an un-used part of the existing concrete yard. The end of life vehicles will be stored on the existing concrete yard in the back corner beside the sewerage works, and the depolluting and dismantling operations will take place within an existing workshop (which is currently used to repair and maintain vehicles of Kilkeel Concrete), inside the existing shed.

Jobs and Employment

This will create a further 2 -3 jobs and help to sustain the existing jobs at Kilkeel Concrete by off-setting high running costs of the Kilkeel Concrete business, such as rates and utilities.

Utilising Existing Brown Field Site

This proposal is entirely consistent with the planning policy for waste operations such as this. The prevailing policy, PPS 11, promotes these types of development to be located within towns, in existing industrial areas and where possible to re-use existing buildings. This proposal wholly accords with this:

- The site is located within a long established industrial area and sits adjacent to the town's sewerage works and neighbouring industrial land uses.
- The operation will re-use an existing industrial concrete yard and an existing shed, which conveniently already operates a work shop.
- It will be accessed via the existing entrance in to the Concrete business.
- It will benefit from the existing screening around the yard, and as a result the proposed waste operation will be difficult to discern from surrounding area.

Waste Management Licence

I must emphasise that all waste operations are extremely heavily regulated by the NIEA and operated under the strict terms of a Waste Management Licence. This will be tightly controlled and will limit;

- Type of wastes to be accepted/ processed at the site
- Volume of waste to be processed at the site
- Volume of waste that can be on the site
- Time that any waste stream can be stored on the site

As the NIEA monitor all waste operations and carry out regular visits, this should allay any concerns about the site operations.

Response to Objections;

We understand some residents within Kilkeel have raised concerns about the proposal. Whilst not all of these residents occupy neighbouring properties and/or will not be directly affected by the proposal we are nevertheless happy to address these concerns:

Noise

In terms of Noise – the site occupies a much lower ground level than the surrounding development and benefit from a high degree of enclosure. It is bound by fences, treed boundaries and is screened by existing operations of the Concrete Business.

The business will involve end of life vehicles being brought into the site and offloaded in the rear corner of the site. Vehicles will then be moved into the shed where the depolluting and dismantling will all occur internally within the shed. The vehicle shells will then be moved outside for storage. Similarly scrap metal will be stored externally in a designed walled bay. The noise will be limited to vehicle movements and occasionally lifting and moving of vehicles and waste metal.

A Noise Assessment was undertaken by an independent expert. This confirmed that the noise impact of the operation would not unduly affect neighbouring properties.

In fact, owing to the nature of the operation the existing concrete business results in greater noise emissions than those resulting from the proposal.

Traffic

The proposal is for a small scale waste operation to run alongside the existing Concrete Business. The volume of traffic will not be significant in this context.

This was accepted and agreed by Transport NI.

Odour/ Smell

There will be no smell or odour arising from the proposal.

Summary

It is therefore our respectful view that this application ought to be approved:

- It is sensitively located in a long established industrial area, which observes a suitable separation distance from housing uses.
- It benefits from a strong degree of enclosure that will minimise any visual or other environmental effects.
- It will offer the town with a facility for the treatment of end of life vehicles and collection of waste metal.
- It will help to create new employment and sustain existing jobs at Kilkeel Concrete
- It is proposed by a reputable local business that has supported local community events for almost 100 years.
- Finally this proposal will contribute to Northern Ireland obligations to increase the amount of waste to be recycled and reclaimed, as laid down by the EU Landfill Directive. It is wholly consistent with the Waste Hierarchy and the Waste Management Strategy. It therefore ought to be welcomed

Gemma Jobling MRTPI

JPE Planning Ltd

ITEM NO 46
APPLIC NO P/2014/0670/F Full **DATE VALID** 8/14/14
COUNCIL OPINION REFUSAL
APPLICANT Mr Frank King C/O Agent **AGENT** ERES Limited
 Mourne House
 41-43 Downshire
 Road
 Newry
 BT34 1EE
 02830250135

LOCATION Lands to the rear of No. 33 Flagstaff Road and associated farm complex (shed approx. 45 metres to the west of existing dwelling with hardstanding extending approx. 50 metres further west and 33 metres further north-west of shed)

PROPOSAL Retention of existing shed and hard standing area for agricultural purposes (revised address and plans)

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|------------------------|--------------------|--------------------|-----------------------------|----------------------|---|
| REPRESENTATIONS | OBJ Letters | SUP Letters | OBJ Petitions | SUP Petitions | |
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| | | | Addresses Signatures | | |
| | | | 0 | 0 | 0 |

- 1 The proposal is contrary to the Strategic Planning Policy Statement (SPPS) and Policy CTY11 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the applicant has not demonstrated that it is to be run in conjunction with the agricultural operations on the farm, it does not involve the re-use or adaptation of existing farm buildings and it has not been demonstrated that there are no other buildings available to accommodate the proposal.
- 2 The proposal is contrary to the Strategic Planning Policy Statement and Policy CTY12 of Planning Policy Statement 21 Sustainable Development in the Countryside, in that the applicant has not provided sufficient information to confirm that there are no suitable existing buildings on the holding or enterprise that can be used and it has not been demonstrated that there are no alternative sites available at another group of buildings on the holding and that health and safety reasons exist to justify an alternative site away from the existing farm buildings and that the alternative site away is essential for the efficient functioning of the business..
- 3 The proposal is contrary to the Strategic Planning Policy Statement (SPPS) and Policy NH 6 of the Planning Policy Statement 2, Planning and Nature Conservation in that the site lies within an Area of Outstanding Natural Beauty and the development is not of an appropriate design which is not sympathetic in appearance and design to the special charcteter of the AONB.



Comhairle Ceantair
an Iúir, Mhúrn
agus an Dúin

**Newry, Mourne
and Down**
District Council

Application Reference: P/2014/0670/F

Date Received: 14.08.14

Proposal: Retention of existing shed and hard standing area for agricultural purposes

Location: Lands to the rear of No. 33 Flagstaff Road and associated farm complex (shed approx. 45 metres to the west of existing dwelling with hard standing extending approx. 50 metres further west and 33 metres further north-west of shed)

Site Characteristics & Area Characteristics:

Site is located 1.7 miles south of Newry within the open countryside within an Area of Outstanding Natural Beauty. The existing shed and hard standing are located within an existing commercial yard/ fuel business known as Fathom Fuels.

The existing shed is constructed of concrete block and cladding with a roller shutter door and entrance doorway. A hopper is attached to the building along with fuel pipes which run from adjacent storage tanks. At the time of inspection the building was used for the storage of bagged coal, sticks, blocks etc. The overall premises and yard are in use for the storage and sale of fuel.

Site History:

EN/P/2012/0070/CA/01 – Unauthorised change of use from agriculture to storage and sales of fuels, siting of associated office, creation of associated areas of hard standing and concrete base and erection of associated buildings and walls. Outcome: The enforcement notice wording is amended but overall the appeal is upheld and a period of 6 months given for compliance. (Informal hearing 27.06.13, decision 29.07.13 - Application site)

P/2012/0070/CA - 31 Flagstaff Road, Fathom Lower (Main Portion), Cloghoge, Newry, Armagh, BT35 8NR, Unauthorised fuel sales yard. (Court action being pursued)

Planning Policies & Material Considerations:

Banbridge/ Newry and Mourne Area Plan 2015: The site is within the open countryside within an AONB

Planning Policy and Advice considered: SPPS, PPS2, PPS3, PPS21 and DCAN15

Additional Information Provided:

Correspondence was forwarded to the agent on the 19th September 2014 during initial stages of processing where he was invited to provide additional information to support the applicant's case, from this only farm maps and an amended P1C form were provided.

It is noted that correspondence attached to the adjacent application P/2014/0678/F and dated 28th October 2014 is also relevant to this case and has also been considered.

SPPS and PPS21 (CTY1, CTY 11 and CTY12)

The policy provides a list of acceptable non-residential which includes provision for farm diversification proposals as well as agricultural development in accordance with policies CTY 11 and 12 respectively.

Farm Diversification (SPPS and PPS21 - CTY11):

The Department of Agriculture in their consultation response dated 26.11.14 have indicated that the applicant has been a member of the farm business since 1994, having a farm business i.d. for more than 6 years with single farm payments claimed within this time, thus indicating that the farm business is currently active and established.

The agent in correspondence dated 28th October 2014 indicates that the 'existing farm yard and fuel sales are intertwined'. Whilst the extent of the application site includes ground within the farm holding (fields 11A and 11B) the existing shed and hard standing are nevertheless a separate entity from the farm activities on the holding and are clearly contained within an existing commercial enterprise. Whilst the agent states that there the existing building is necessary as all other buildings on the holding are fully utilised for farming activities and there are no options available. Despite this assertion, this has not been fully demonstrated nor how it will be run in conjunction with agricultural operations of the farm.

Whilst the green clad and concrete block finishes are typical materials found on agricultural buildings within the locality. The building itself has been purpose built and designed for commercial use in association with a fuel business and not for agricultural purpose. The building does not link or cluster with any other farm buildings as characterised within the AONB locality. Whilst an agricultural use is deemed an appropriate land use at this location the retention of such a suburban building for such purpose is inappropriate and excessive in terms of size and scale for its intended use. The retention of the building and hard standing will continue to detract from the area despite its proposed use. Given the overall existing suburban

form which will be maintained through retention this will still contribute negatively to the visual quality of the area.

Whilst there is scope within CTY 11 for the reuse or adaption of buildings for farm diversification proposals this is only applicable when they are existing farm buildings. Given the current use of the building and yard as part of a commercial enterprise this is not relevant in this case. Overall proposals fail to meet the policy tests of SPPS and CTY11.

Agricultural Development (SPPS and PPS21 – CTY12)

Given the comments from the Department of Agriculture dated 26.11.14 it is acknowledged that the applicant has an active and established farm however no information has been submitted to justify why the proposal is necessary for the efficient operation of the holding or enterprise.

The farm business is registered to the applicant at No. 83 Flagstaff Road with an extensive agricultural holding, the existing shed and hard standing lie outside the farm holding. Although planning policy gives consideration to an alternative site away from the existing farm buildings this is only in exceptional circumstances. However, in this instance no justifiable case has been presented as to why the development could not have been located elsewhere within the holding.

The existing building and hard standing area are currently in use commercially, as part of a fuel storage and distribution business and is not used for agricultural purpose. The building/ hard standing area are within a self-contained yard separated from the remainder of the farm holding with no case presented that the building and hard standing will be specifically for an agricultural use.

Furthermore the building has been designed for the purposes of a commercial nature with the appearance, height, size, scale along with roller shutter doors, link to oil tanks and a hopper have a suburban appearance which is not typical of agricultural development expected within the countryside.

Proposals fail to meet the requirements of planning policy.

Impact to Amenity (4.11 and 4.12 of the SPPS)

Whilst Environmental Health in their consultation response dated 2nd December 2014 raised no concerns. However due to the nature of development at the site including the level of activity the Planning Authority would have concern in terms of potential noise, general nuisance and visual intrusion therefore recommend refusal on this basis.

Development within the AONB (SPPS and PPS2)

Although the shed and hard standing already exist at this location the overall design, appearance and use for commercial purposes are out of context within the rural setting of the AONB. Although the proposed retention for agricultural purpose may be more acceptable in terms of land uses expected within this designated area it cannot overcome the fact that the existing building/ hard standing are suburban in form.

The continued retention of the building and hard standing will continue to be inappropriate to this location and will maintain an adverse visual appearance which is and will continue to be unacceptable.

Consultations:

Transport NI (20.11.14) – A 1:500 scale plan showing access details with sightlines

Environmental Health (02.12.14) - Retention of agricultural shed is located 75m from a domestic dwelling not associated with the farm, potential for nuisance

DARD (26.11.14) - Business i.d. and single farm payments claimed for more than 6 years, a member of the business since 1994

NIW (14.11.14) – Generic response

Objections & Representations

Neighbour notification and re-notification 23.08.16 due to changes in plans and amended address to 6 properties

Advertised 19.08.14 and re-advertised

No objections received

Consideration and Assessment:

Proposals are located outside the existing agricultural holding of the applicant, contained within an existing commercial enterprise which is separated and self-contained. It has not been clearly demonstrated that the proposed uses will be run in conjunction with and are required for the efficient running of existing agricultural operations or that 'existing farm buildings' could not be utilised for such purposes elsewhere within the farm holding. The existing building and hard standing are inappropriate within the AONB designed for commercial enterprise which in itself has detracted from the visual appearance of the area the retention of such will not overcome its suburban appearance and will continue to have adverse visual consequences for the area.

Overall proposals fail to meet planning policy requirements of SPPS, PPS21 (CTY11 and CTY 12) and PPS2, therefore it is recommended to refuse the application.

Recommendation: Refusal

Refusal Reasons:

1. The proposal is contrary to the Strategic Planning Policy Statement and Policy CTY 11 of Planning Policy Statement 21 in that:
 - the applicant has not demonstrated that it is to be run in conjunction with the agricultural operations;
 - the character and scale of the development is not appropriate to its location
 - it has not been demonstrated that there are no suitable existing buildings on the holding that can be used or that there are no sites available at another group of buildings on the holding before considering this alternative site for the location of the farm diversification proposal
 - the development, if permitted, will have an adverse impact on the natural heritage;

- it does not involve the re-use or adaptation of existing farm buildings and it has not been demonstrated that there are no other buildings available to accommodate the proposal.

and that there are no overriding reasons why this development is essential and justifiable at this rural location.

2. The proposal is contrary to the Strategic Planning Policy Statement Policy CTY 12 of Planning Policy Statement 21 of PPS 21, in that:
 - it has not been demonstrated that it is necessary for the efficient functioning of the agricultural holding
 - its character and scale are not appropriate to its location
 - the development will have an adverse impact on designated AONB
 - it will not result in detrimental impact on the amenity of residential dwellings outside the holding or enterprise
 - it has not been demonstrated that there are no suitable existing buildings on the holding that can be used or that there are no sites available at another group of buildings on the holding before considering this alternative site.
 - the design is not sympathetic to the locality and is not sited beside existing farm buildings
3. The proposal is contrary to the Strategic Planning Policy Statement (SPPS) and Policy NH 6 of the Planning Policy Statement 2, Planning and Nature Conservation in that the site lies within an Area of Outstanding Natural Beauty and the development is not of an appropriate design which is sympathetic in to the character and appearance of the AONB.
4. The proposed development would if permitted harm the living conditions of residents of Flagstaff Road by reason of noise, visual intrusion and general nuisance.

Case Officer:

Authorised Officer:

Photographs:



Existing shed to be retained



Existing shed to be retained



Existing shed to be retained



Existing shed and yard to be retained

Existing yard



Existing yard and shed



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NEWRY, MOURNE & DOWN COUNCIL

Local Planning Office

Monaghan Row,

Newry,

BT35 8DJ

Reference: P/2014/0670/F
Applicant Name: Mr Frank King
Proposal: Retention of existing shed and hard standing area for agricultural purposes (revised address and plans)
Site Location: Lands to the rear of No. 33 Flagstaff Road and associated farm complex (shed approx. 45 metres to the west of existing dwelling with hardstanding extending approx. 50 metres further west and 33 metres further north-west of shed)

Newry, Mourne & Down Local Planning Office intends to refuse this application on the grounds that:

1 The proposal is contrary to the Strategic Planning Policy Statement (SPPS) and Policy CTY11 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the applicant has not demonstrated that it is to be run in conjunction with the agricultural operations on the farm, it does not involve the re-use or adaptation of existing farm buildings and it has not been demonstrated that there are no other buildings available to accommodate the proposal.

2 The proposal is contrary to the Strategic Planning Policy Statement and Policy CTY12 of Planning Policy Statement 21 Sustainable Development in the Countryside, in that the applicant has not provided sufficient information to confirm that there are no suitable existing buildings on the holding or enterprise that can be used and it has not been demonstrated that there are no alternative sites available at another group of buildings on the holding and that health and safety reasons exist to justify an alternative site away from the existing farm buildings and that the alternative site away is essential for the efficient functioning of the business..

3 The proposal is contrary to the Strategic Planning Policy Statement (SPPS) and Policy NH 6 of the Planning Policy Statement 2, Planning and Nature Conservation in that the site lies within an Area of Outstanding Natural Beauty and the development is not of an appropriate design which is not sympathetic in appearance and design to the special character of the AONB.

Preliminary Matters

The Planning Authority has based their first refusal reason around Policy CTY11 from PPS 21 and the SPPS which relate to farm diversification. This application does not seek to diversify from the existing farm. This application is for the retention of the existing building and hard standing area for agricultural purposes in relation to the existing farm holding. Any reference to Policy CTY11 should therefore be removed from this application as it does not reflect the proposal.

Consideration

The application site is within the countryside as defined in the Adopted Banbridge, Newry & Mourne Area Plan 2015. There are no specific policies within the plan of relevance to the appeal proposal. The Strategic Planning Policy Statement for Northern Ireland Planning for Sustainable Development (SPPS) was published on 28th September 2015. It states that until such times as a Plan Strategy for the whole of the council area has been adopted, Local

Planning Authorities (LPAs) will apply existing policies within the Planning Policy Statements (PPSs) that have not been cancelled. Planning Policy Statement 21: Sustainable development in the Countryside (PPS 21) provides the relevant planning context for determining this appeal.

Planning Policy Statement 21: Sustainable Development in the Countryside, (PPS 21), Policy CTY 1 sets out a range of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development and that other types of development will only be permitted where there are overriding reasons why that development is essential and could not be located in a settlement. One of these is an agricultural shed in accordance with Policy CTY 12.

Policy CTY 12 states that planning permission will be granted for development on an active and established agricultural holding where it is demonstrated that it meets five criteria.

The policy is permissive in nature and outlines exactly which criteria are required for planning permission to be granted.

Appendix 1 contains details of the existing farm holding which includes the farm maps previously submitted to the Planning Authority. I have also included a spatial map identifying the farm in its entirety for ease of use.

The existing farm buildings are centred around the application site. This is the location of the principle group of farm buildings. **Appendix 2** contains an aerial photograph of the existing farm yard which includes the application building and 3 other existing buildings on the farm. These buildings are all full to capacity with either cattle or farm materials and machinery. There is no room within the buildings for additional use. The application shed is therefore essential to facilitate the longevity and efficiency of this considerable farm enterprise.

The Case Officer's report states "Correspondence was forwarded to the agent on the 19th September 2014 during initial stages of processing where he was invited to provide additional information to support the applicant's case, from this only farm maps and an amended P1C form were provided."

Despite numerous requests from our office over the past 2 years for an update on the application did any of the case officers involved request any additional information relating to the justification of the proposal. It therefore comes as a disappointment that this application has now been presented to the Council as a refusal.

While the applicant resides at No. 83 Flagstaff Road, the principle group of buildings on this holding is located at the application site. This fact would have been quite evident to the case officer during her site visit. It is therefore not necessary to provide health and safety reasons for an off-site location as the proposal is located beside existing agricultural buildings.

The Case officer also states "Whilst the green clad and concrete block finishes are typical materials found on agricultural buildings within the locality." Despite the assertion that the building was initially designed for commercial purposes, the Case Officer has inadvertently agreed that the building bears a resemblance to agricultural design. This application seeks the retention of the shed for agricultural purposes only. This type of shed is entirely appropriate to this rural area as it represents modern agricultural building design where many agricultural buildings now utilise concrete walls and green metal sheeting in their construction. The shed is also located within an existing agricultural yard and beside other agricultural buildings of similar scale. It is therefore contended that this shed is easily assimilated into this landscape.

Whilst there is an enforcement notice on this site, the applicant is exercising his right to regulate the development through the submission of a planning application.

It is proposed to use this building for various agricultural uses throughout the year. Cattle are grazed in these fields throughout the year and this shed will act as shelter for the animals

from the elements and as a storage facility for animal bedding, feedstock and medicines. The shed will also be utilized for the storage of farm machinery.

The welfare of an animal includes its physical and mental state and it is considered that good animal welfare implies both fitness and a sense of well-being. Any animal kept by man, must at least, be protected from unnecessary suffering.

An animal's welfare, whether on farm, in transit, at market or at a place of slaughter should be considered in terms of 'five freedoms' as defined by the Farm Animal Welfare Council. These freedoms define ideal states rather than standards for acceptable welfare. They form a logical and comprehensive framework for analysis of welfare within any system together with the steps and compromises necessary to safeguard and improve welfare within the proper constraints of an effective livestock industry.

1. Freedom from Hunger and Thirst - by ready access to fresh water and a diet to maintain full health and vigour.
2. Freedom from Discomfort - by providing an appropriate environment including shelter and a comfortable resting area.
3. Freedom from Pain, Injury or Disease - by prevention or rapid diagnosis and treatment.
4. Freedom to Express Normal Behaviour - by providing sufficient space, proper facilities and company of the animal's own kind.
5. Freedom from Fear and Distress - by ensuring conditions and treatment which avoid mental suffering.

As mentioned above, the other existing sheds within this agricultural yard are fully utilised and there are no other examples of agricultural buildings on the holding. Although the

applicant lives at 83 Flagstaff Road there are no available agricultural buildings at that address. The principle group of agricultural buildings on the holding is at the application site.

As part of the Ulster Farmers Union the Applicant must, under the welfare legislation, take all reasonable steps to ensure that he does not cause any unnecessary pain, suffering, injury or distress to his animals. I feel it must be stressed at this point that Criteria A from CTY12 requires that the proposal is necessary for the **efficient** use of the agricultural holding. For the Applicant to remain as part of his existing animal schemes and memberships it is essential that shelter facilities are provided at this isolated part of the holding.

The main role of any farmer with breeding stock is to ensure that his stock is healthy and produce a calf every year. Farmers every day carry out routine general health inspections of their stock, and on numerous occasions throughout the year must carry out various routine treatments. This ranges from foot trimming, ultra-scanning, administering of prescribed medicines such as routine worming, fluke dosing etc. On many occasions assistance with calving is essential to ensure the health of the mother and newly born calf. It is therefore vital that Mr. King has the appropriate type and amount of facilities for his herd size to allow him to carry out these inspections and assistance when necessary.

In light of the above submission and the information previously submitted to the Council I would respectfully request that this application be deferred for further consideration.

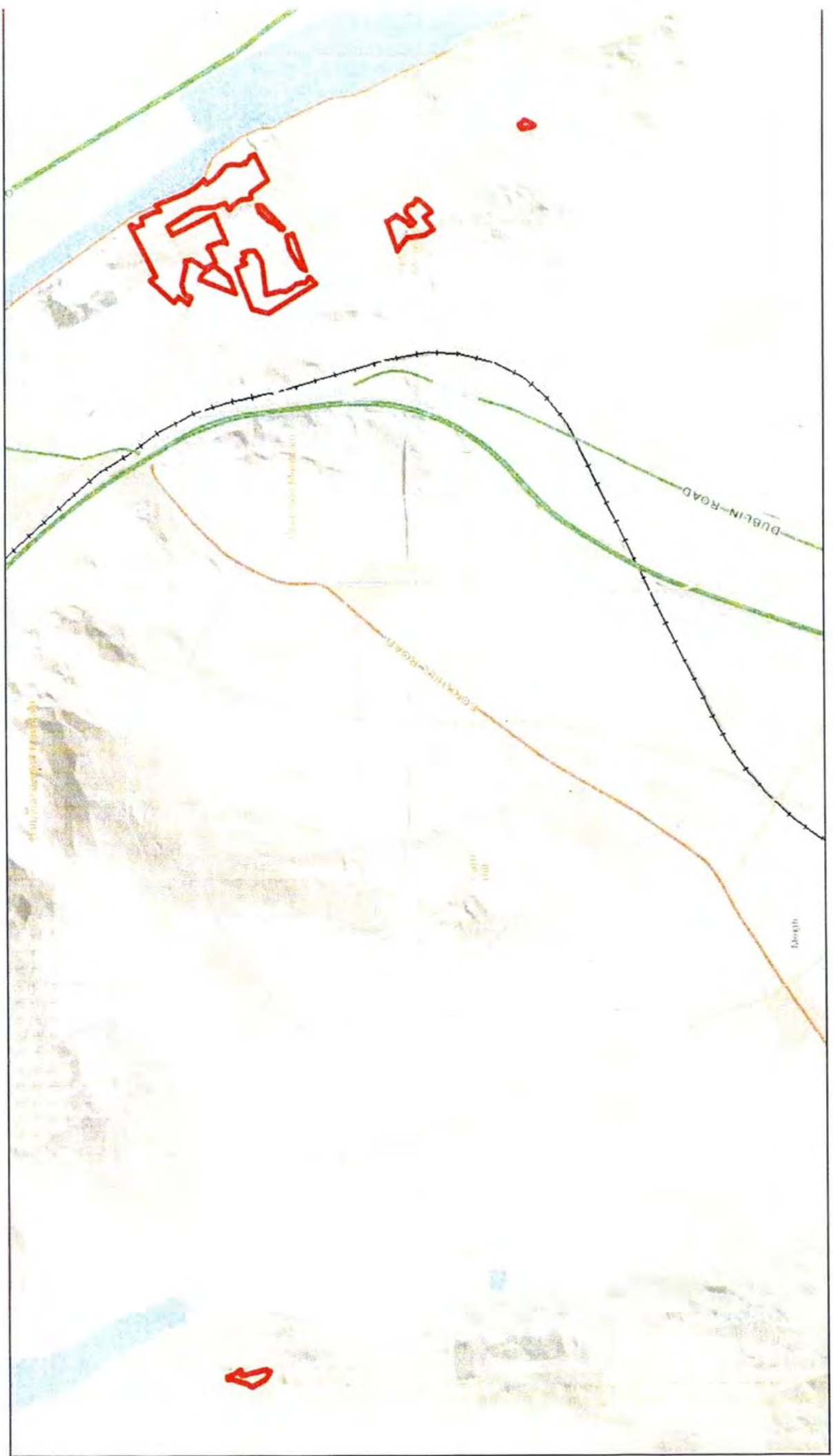
Yours Sincerely,



Stephen Hughes

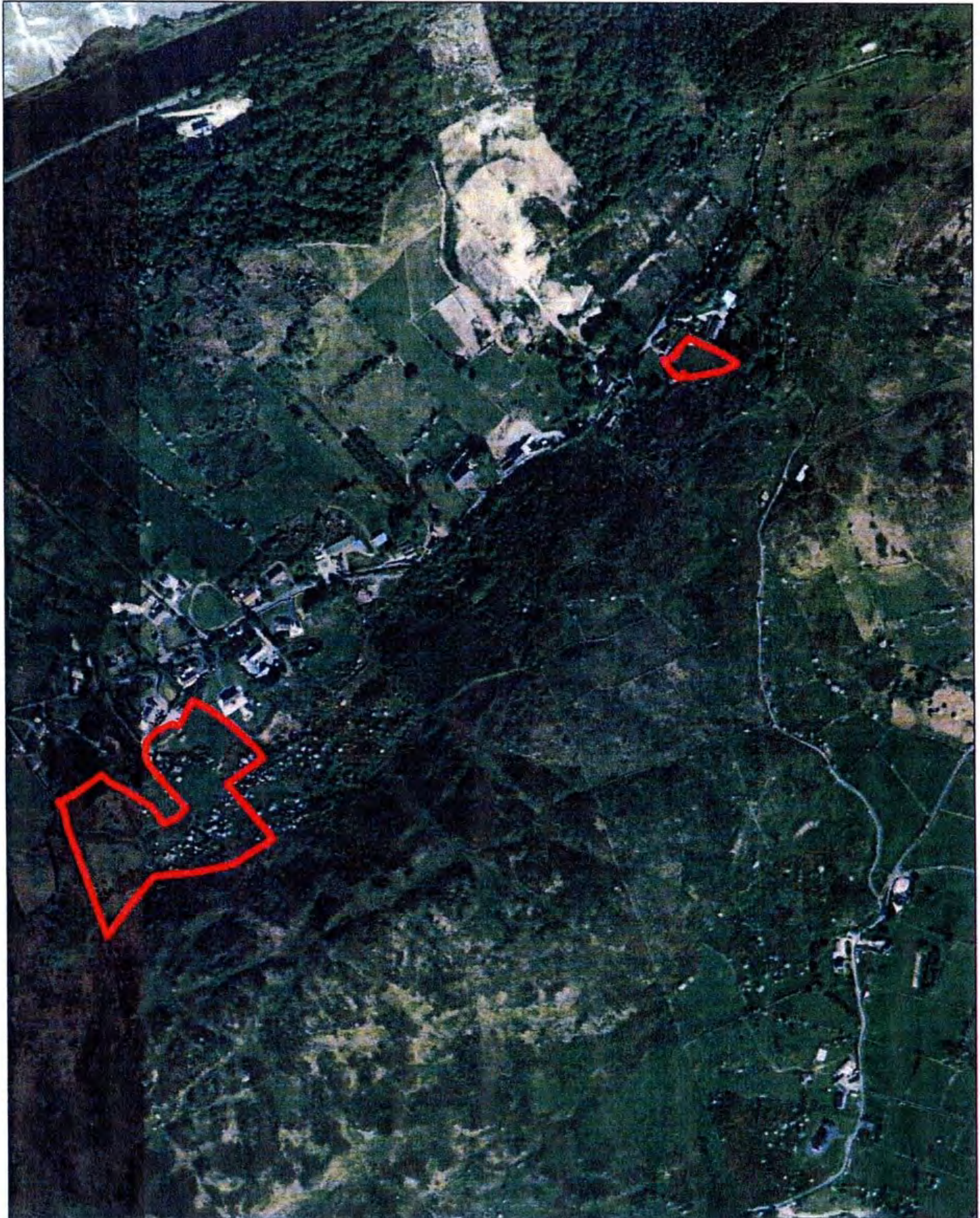
ERES Ltd.

APPENDIX 1
Existing Farm Holding









APPENDIX 2
Existing Agricultural Yard



ITEM NO 47
APPLIC NO P/2014/0678/F **Full DATE VALID** 8/14/14
COUNCIL OPINION REFUSAL
APPLICANT Mr Frank King C/O Agent **AGENT** ERES Limited
 Mourne House
 41-43 Downshire Road
 Newry
 BT34 1EE
 02830250135

LOCATION 33a Flagstaff Road
 Fathom Lower
 Newry
 Armagh
 BT35 8NR

PROPOSAL Retention of existing fuel sales business to include existing hard standing area and portacabin

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|------------------------|--------------------|--------------------|-----------------------------|----------------------|------------------|-------------------|
| REPRESENTATIONS | OBJ Letters | SUP Letters | OBJ Petitions | SUP Petitions | | |
| | 0 | 0 | | 0 | | 0 |
| | | | Addresses Signatures | | Addresses | Signatures |
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- 1 1. The proposal is contrary to the Strategic Planning Policy Statement and Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
- 2 2. The proposal is contrary to Policy CTY11 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the applicant has not demonstrated that it is to be run in conjunction with the agricultural operations on the farm, it does not involve the re-use or adaptation of existing farm buildings and it has not been adequately demonstrated that there are no other buildings available to accommodate the proposal.
- 3 3. The proposal is contrary to the Strategic Planning Policy Statement (SPPS) and Policy NH 6 of the Planning Policy Statement 2, Planning and Nature Conservation in that the site lies within an Area of Outstanding Natural Beauty and the development, use and operations are not sympathetic to the character and appearance of the AONB.
- 4 4. The proposal is contrary to paragraphs 6.279 of the Strategic Planning Policy Statement in that the site lies within the open countryside and no special need has been demonstrated to justify relaxation of the strict planning controls exercised in the countryside
- 5 5. The proposed development would if permitted harm the living conditions of residents of Flagstaff Road by reason of noise, visual intrusion and general nuisance.



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**Newry, Mourne
and Down**
District Council

Application Reference: P/2014/0678/F

Date Received: 14.08.14

Proposal: Retention of existing fuel sales business to include existing hard standing area and portacabin

Location: 33a Flagstaff Road, Fathom Lower, Newry, Armagh, BT35 8NR

Site Characteristics & Area Characteristics:

Site is located 1.7 miles south of Newry within the open countryside within an Area of Outstanding Natural Beauty.

The site comprises of an existing commercial yard/ fuel business known as Fathom Fuels. On site there is an existing portacabin used as an office associated with fuel sales. Immediately adjacent and north of this is a sale/ storage area with two fuel pumps, gas tanks and bagged fuel, this area is covered by a corrugated roof supported by a concrete wall and steel post. An existing shed is located to the western portion of the site which is being used for the storage of fuel and the hard standing is part of the overall commercial yard for storage, sales and distribution.

Site History:

EN/P/2012/0070/CA/01 – Unauthorised change of use from agriculture to storage and sales of fuels, siting of associated office, creation of associated areas of hard standing and concrete base and erection of associated buildings and walls.

Outcome: The enforcement notice wording is amended with a period of 6 months given for compliance. (Informal hearing 27.06.13, decision 29.07.13 - Application site)

P/2012/0070/CA - 31 Flagstaff Road, Fathom Lower (Main Portion), Cloghoge, Newry, Armagh, BT35 8NR, Unauthorised fuel sales yard. (Court action being pursued)

Planning Policies & Material Considerations:

Banbridge/ Newry and Mourne Area Plan 2015: The site is within the open countryside within an AONB - The proposal is contrary to the Local Development Plan as it falls outside the Town Centre Boundary / retail area as designated in the Banbridge / Newry and Mourne Area Plan 2015 and should be refused on this basis

Planning Policy and Advice considered: SPPS, PPS2, PPS3, PPS21 and DCAN15

Additional Information Provided:

Information submitted 28th October 2014 includes a letter outlines how proposals meet policy requirements, P1C form and farm maps showing the extent of the holding and land registry maps.

Note: Drawings submitted do not accurately reflect the extent of development on site, the agent has been advised to provide an accurate plan which has yet to be submitted

SPPS and PPS21 (CTY1)

The policy provides a list of non-residential uses which may be deemed acceptable within the countryside; this includes provision for farm diversification in accordance with CTY 11. CTY 1 specifically states that other types of development will be permitted where there are overriding reasons as to why the development is essential and could not be located within a settlement.

Given the commercial nature of proposals this type of development is better suited to an urban location and not an expected use within the open countryside. No overriding reasons have been presented as to why the development is essential at this rural location and could not be located elsewhere within a settlement. Therefore the development fails to meet CTY1 of PPS21

Retailing (SPPS)

The policy emphasises that retailing should be directed towards town centres although consideration is given to appropriate retail facilities such as farm shops, crafts shops or shops to serve tourist/recreational facilities. The retail sale of fuel and related products is not deemed to be an appropriate retailing facility within the countryside. The business operates as a separate entity outside of the farm holding and is not tied to it therefore it is not an acceptable use at this rural location and not in compliance with planning policy. This is a position supported by a decision made by the Planning Appeals Commission in relation to this matter. (2014/E0048)

Farm Diversification (SPPS and CTY11)

DARD in their consultation response dated 26.11.15 confirm that the farm business i.d. has been in existence over 6 years with single farm payments claimed. While the Council do not dispute the active and established nature of the farm business the

land to which the proposal relates as well as adjoining land (which is subject to a separate planning application P/2014/0670/F) are outside the farm holding with both portions of land utilised for commercial enterprise and not for agricultural purposes.

The agent in correspondence dated 28th October 2014 indicates that the 'existing farm yard and fuel sales are intertwined' however the existing fuels sales area and buildings are a separate entity and do not operate in conjunction with the agricultural operations of the farm.

The agent has also stated that the retention of the existing building is necessary as all other buildings on the holding are fully utilised for farming activities and there are no available options available. Given the size and scale of the overall enterprise it is difficult to envisage how proposals could possibly be accommodated elsewhere within the holding without causing adverse impact upon the rural setting. The current site comprising the existing fuel business, hard standing area and portacabin are already inappropriate to its location and detract from the visual appearance of the area. The retention of such will continue to have adverse consequence on this designated area.

Impact to Amenity (4.11 and 4.12 of the SPPS)

Whilst Environmental Health in their consultation response dated 16th September 2014 have raised no concerns. However due to the nature of development at the site including the level of activity the Planning Authority would have concern in terms of potential noise, general nuisance and visual intrusion and would recommend refusal on this basis.

Development within the AONB (SPPS and PPS2)

The overall use, design and appearance of buildings are already out of context with the rural setting of the AONB having an adverse visual impact due to the suburban nature of the development and will continue to do so with its retention.

Consultations:

NIW (04.09.14) - Generic response

NIEA (11.09.14) - Concerns raised regarding disposal of sewerage, consent to discharge required

Environmental Health (16.09.14) - No objection

Transport NI (30.01.15) - No objections raised

DARDNI (26.11.15) – Business i.d. more than 6 years and single farm payments claimed

Objections & Representation

5 neighbour notifications issued

Advertised 26.08.14

No objections received

Consideration and Assessment:

The existing fuel sales business to include existing hard standing area and portacabin are currently unlawful with no evidence presented to indicate that the current uses are lawful, established and immune from enforcement and thus its retention is not justified.

The agent has provided supporting information (letter, farm and land registry maps dated 28th October 2014) to demonstrate how proposals meet the requirements of policy. Despite this there is no exceptional case for the development to be retained within the open countryside and that it could not be located within a settlement thus proposals fail policy requirements of SPPS and PPS21 (CTY1). In consideration of a farm diversification case the proposals are located outside the existing farm holding, operates separately from it and not run in conjunction with any agricultural operations and therefore does not fulfil of policy with this regard (SPPS and CTY11).

Whilst the SPPS identify acceptable retail uses within the countryside these proposals clearly do not meet such criteria and thus fail against policy. The area is designed as an Area of Outstanding Natural Beauty the current commercial enterprise has already eroded the visual quality of this rural location which is predominantly characterised by detached dwellings, agricultural and mountainous landscape that the retention and continuation of such proposals will detract from this designated area and thus is contrary to the SPPS and PPS2. Furthermore despite the consultation from Environmental Health the Planning Authority do have concerns with regard to impact on the amenity of neighbours within the vicinity and recommend it is also refused on this basis.

Overall proposals fail to meet policy requirements of the SPPS, PPS21 (CTY 1 and 11) and PPS2, as outlined above and thus it is recommended to refuse the application.

Recommendation: Refusal

Refusal Reasons:

1. The proposal is contrary to the Strategic Planning Policy Statement and Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
2. The proposal is contrary to Policy CTY11 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the applicant has not demonstrated that it is to be run in conjunction with the agricultural operations on the farm, it does not involve the re-use or adaptation of existing farm

buildings and it has not been adequately demonstrated that there are no other buildings available to accommodate the proposal.

3. The proposal is contrary to the Strategic Planning Policy Statement (SPPS) and Policy NH 6 of the Planning Policy Statement 2, Planning and Nature Conservation in that the site lies within an Area of Outstanding Natural Beauty and the development, use and operations are not sympathetic to the character and appearance of the AONB.
4. The proposal is contrary to paragraphs 6.279 of the Strategic Planning Policy Statement in that the site lies within the open countryside and no special need has been demonstrated to justify relaxation of the strict planning controls exercised in the countryside
5. The proposed development would if permitted harm the living conditions of residents of Flagstaff Road by reason of noise, visual intrusion and general nuisance.
6. The proposal is contrary to the Local Development Plan as it falls outside the Town Centre Boundary / retail area as designated in the Banbridge / Newry and Mourne Area Plan 2015.
7. Having notified the applicant under Article 3 (6) of the Planning (General Development Procedure) Order (Northern Ireland) 2015 that further details were required to allow the Council to determine the application, and having not received sufficient information, the Council refuses this application as it is the opinion of the Council that this information is material to the determination of this application.

Case Officer:

Authorised Officer:



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NEWRY, MOURNE & DOWN COUNCIL

Local Planning Office

Monaghan Row,

Newry,

BT35 8DJ,

Reference: P/2014/0678/F
Applicant Name: Mr Frank King
Proposal: Retention of existing fuel sales business to include existing hard standing area and portacabin
Site Location: 33a Flagstaff Road Fathom Lower Newry Armagh BT35 8NR

Newry, Mourne & Down Local Planning Office intends to refuse this application on the grounds that:

1. The proposal is contrary to the Strategic Planning Policy Statement and Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
2. The proposal is contrary to Policy CTY11 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the applicant has not demonstrated that it is to be run in conjunction with the agricultural operations on the farm, it does not involve the re-use or adaptation of existing farm buildings and it has not been adequately demonstrated that there are no other buildings available to accommodate the proposal.

3. The proposal is contrary to the Strategic Planning Policy Statement (SPPS) and Policy NH 6 of the Planning Policy Statement 2, Planning and Nature Conservation in that the site lies within an Area of Outstanding Natural Beauty and the development, use and operations are not sympathetic to the character and appearance of the AONB.

4. The proposal is contrary to paragraphs 6.279 of the Strategic Planning Policy Statement in that the site lies within the open countryside and no special need has been demonstrated to justify relaxation of the strict planning controls exercised in the countryside

5. The proposed development would if permitted harm the living conditions of residents of Flagstaff Road by reason of noise, visual intrusion and general nuisance.

Consideration

Planning Policy Statement 21: Sustainable Development in the Countryside, (PPS 21), Policy CTY 1 sets out a range of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development and that other types of development will only be permitted where there are overriding reasons why that development is essential and could not be located in a settlement. The range of acceptable development includes farm diversification proposals in accordance with Policy CTY 11. Policy CTY 1 goes on to say that there are a range of other types of non-residential development that may be acceptable in principle in the countryside and that proposals for such development will be considered in accordance with existing published planning policies.

Policy CTY 11 states that planning permission will be granted for a farm diversification proposal where it has been demonstrated that it is to be run in conjunction with the agricultural operations on the farm. Four criteria are listed under Policy CTY 11, namely:

- (a) the farm or forestry business is currently active and established;
- (b) in terms of character and scale it is appropriate to its location;

- (c) it will not have an adverse impact on the natural or built heritage; and
- (d) it will not result in detrimental impact on the amenity of nearby residential dwellings including potential problems arising from noise, smell and pollution.

The Planning Authority dispute that the development is run in conjunction with the operations on the farm and fails to fulfil criteria (b), (c) and (d).

It is contended that Mr King already uses this existing commercial business in conjunction with his existing farm business. The policy provides no explanation of the requirement “to be run in conjunction with the agricultural operations on the farm” and could have been clearer. Case Law determines that any ambiguity in the policy should be interpreted in the appellant’s favour. This approach is comparable to planning appeal ref: 2009/E029 (**Appendix 1**) where it was judged that an engineering business which ran beside an existing agricultural business would be ran in conjunction with each other.

In a similar fashion, Mr King is actively involved in both his fuel business and his extension farm business. Both essentially operate out of the same premises. It is therefore contended that Mr King fulfils the policy headnote of CTY11.

In terms of character and scale the existing business is located within an existing yard with the porta cabin essentially screened from the road when the access gates are closed. The buildings are also located with a significant example of ribbon development along this part of Flagstaff Road. The buildings are quite easily assimilated into this area and would be difficult to view from any approach. The site is surrounded by much larger agricultural buildings which dwarf the application buildings. In this manner it is felt that the buildings are appropriate in character and scale to this locality. The proposal will not have any detrimental impact on this AONB as the character of this locality has already been irreparably changed. This business is located in the middle of the existing built development and is readily ensconced within it.

It is notable that Environmental Health have issued a consultation response dated 16 September 2014 with no objections to the proposal. In addition to this the Applicant owns the dwellings either side of the application site, including a busy agricultural yard and therefore the only dwellings that will be directly affected by the operation are those in control of Mr King.

Full details of the Applicant's farm maps were submitted to the Department along with this application. The existing farm buildings are located beside the application site. This is the location of the principle group of farm buildings on the holding **Appendix 2** contains an aerial photograph of the existing premises which includes the application site and 4 other existing buildings on the farm. Buildings A, B & C are all full to capacity with either cattle of farm materials and machinery. They are essential for the maintenance of the existing farm enterprise. The unauthorised shed (D) is required for the existing farm enterprise (Application P/2014/0670/F). There is no room within the buildings for additional use. There are therefore no other available buildings anywhere on the holding to use for this diversification project.

It is therefore felt that this application meets the relevant criteria within Policy CTY11 and Planning permission should be forthcoming.

In light of the above submission and the information previously submitted to the Council I would respectfully request that this application be deferred for further consideration.

Yours Sincerely,



Stephen Hughes

ERES Ltd.

APPENDIX 1
Planning Appeal Ref: 2009/E029

Enforcement Appeal Decision

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| Appeal Reference: | 2009/E029 |
| Appeal by: | James Beattie against an Enforcement Notice dated 16 June 2009. |
| Development: | Unauthorised use of land for an engineering business. |
| Location: | 24 Strahulter Road, Strahulter, Newtown Stewart, Strabane. |
| Application Reference: | EN/2009/0217 |
| Procedure: | Written Representations and Accompanied Site Visit on 24 March 2010. |
| Decision by: | Commissioner Maire Campbell, dated 31 st March 2010. |

Grounds of Appeal

1. The appeal was made on grounds (a), (e), (f) and (g) as set out in Article 69 (3) of the Planning (Northern Ireland) Order 1991 (the Order). Ground (e) of appeal was withdrawn in the appellant's Statement of Case. There is a deemed planning application by virtue of Article 71(5) of the Order.

The Notice

2. The Notice identifies an area of land and two of the buildings within that area. These are marked 1 and 2 on the map accompanying the Enforcement Notice. Approval was granted on 6 November 2009, Departmental reference J/2009/0362/F for use of an existing farm building for the storage, packing and distribution of potatoes and vegetables as a farm diversification project. The Department confirmed that its objection was confined to the use of building 1 for an engineering business and stated that the Notice should be corrected at 3, to refer, not to the land, but to building 1. This correction would not result in prejudice to the appellant and accordingly I will make it under Article 70(2) of the Order.

Reasoning

Ground (a) and the deemed planning application

3. The notice site is within the rural area and the Department indicated that the development satisfied many of the criteria set out in policy CTY 11 - Farm Diversification of draft Planning Policy Statement 21: Sustainable Development in

the Countryside. The only requirement of CTY 11 not satisfied is that the diversification scheme is "to be run in conjunction with the agricultural operations on the farm.". Accordingly this is the sole issue in relation to ground (a) and the deemed planning application.

4. The following facts about the existing operation are pertinent to the consideration of the issue in the appeal.
 - The appellant is a farmer and farm maps indicate that he owns, or part owns, more than 40 hectares in the vicinity of the Notice site. He farms barley and potatoes and 20+ acres is let in conacre annually. He has a herd of 10 cattle. He owns all buildings on the Notice site.
 - The buildings, which include a dwelling, identified on the Notice map, were derelict in the 1980s; they had been used by army/police. Building 1 was used by the appellant as a silage pit until 1991 and then was vacant until 2002 when the appellant repaired it (new corrugated iron sheeting and re-plastering of walls) and used it to store potatoes and carry out repairs, welding and general maintenance to farm machinery and equipment. The engineering work was to equipment on his own farm and those of his neighbours. He was assisted by two friends who live locally (within one mile).
 - The appellant now works at farming, including fruit and vegetables on his own farm and at the packaging and distribution business carried out in building 2.
 - The appellant's two friends continued with the engineering business in building 1. They now use the name Pro Fab and have two employees. The appellant has an oral agreement with Pro Fab about the use of building 1 and Pro Fab pays a weekly rent. The range of the work and the clientele now carried out by Pro Fab has not changed since the business was started by the appellant. Pro-Fab does work for the appellant and for this he pays the going rate.
 - The appellant stated that if Pro Fab ceased work, he would continue the engineering business, retaining his original customers (within a distance of 5-10 miles).
5. These facts were not disputed by the Department. It was argued that the development was not sustainable, a requirement of CTY 11 as the appellant only received a rental income and Pro Fab is now in control of the engineering business. The Department stated that the purpose of farm diversification was to provide additional income for farmers but schemes must be sustainable. The policy provided no explanation of the requirement "to be run in conjunction with the agricultural operations on the farm" and could have been clearer. Any ambiguity in the policy should be interpreted in the appellant's favour.

6. In considering whether the Department's objection to the existing development in building 1 should be sustained, I consider the following points to be significant:-
 - the Department accepted that the character and scale of the operation is appropriate to this rural location and that it was otherwise acceptable. This concession addresses the impact on landscape, natural heritage and residential amenity.
 - The appellant is a farmer, agricultural operations are continuing on the larger holding and there is no impediment to agricultural operations continuing on the Notice site, including in the remaining buildings on the Notice site.
 - The operation is largely confined within a building formerly used for agriculture.
 - The engineering operation was started by the appellant, is now run by local people and provides service for local farmers.
7. Taking account of the combination of these factors, I conclude that the operation in building 1 represents a sustainable farm diversification project. I agree with the Department that the policy requirement of "run in conjunction with agricultural operations on the farm" is not clear. The Departmental official was unable to provide any further clarification. I do not consider that this requirement can be read to mean that this farm diversification proposal can only be run by this appellant or that he must have a degree of control higher than that indicated in this appeal.
8. Policy CTY 11 would have applied to the approval granted in building 2 on the Notice site. I note that this approval, though granted to the appellant, does not in any way restrict the management or control of the project. The Department correctly accepted that building 2 and the business in it could be sold by the appellant at any time. The appellant's rebuttal provided an example of a similarly unrestricted approval, Departmental reference K/2008/1055/F dated 9 July 2009. These examples of Departmental approvals reinforce my conclusions in paragraph 7 above.
9. I have not been persuaded by the Department that the sustainability of the present operation, which is otherwise acceptable under CTY 11, would be enhanced if the appellant were dealing with it. I find the Departmental objection not to be sustained and conclude that the existing operation on the Notice site satisfies the requirements of policy CTY 11 of draft PPS 21.
10. To ensure that the operation continues to provide an ongoing rental income for this appellant and in connection with this farm, I consider that he should retain ownership of building 1. A replacement dwelling is under construction just south of the existing building on the Notice site; accordingly I agree with the Department that working hours should be restricted as suggested during oral

proceedings. The Department also suggested that the storage of material should be confined to the Notice site. The site is generally open to Strahulter Road and this is an identified scenic route close to the Owenkillew River leading into the Sperrins. The use of the entire Notice site, which includes the site of the dwelling, for the open storage of engineering materials would be visually unacceptable. I note that the appellant stated that the business does not require outside storage. I conclude that any open storage should be confined to the area in the immediate vicinity of building 1, now cross-hatched on the map which accompanied the Enforcement Notice and which is attached to this decision.

11. The appeal under ground (a) succeeds and the deemed planning application is granted subject to conditions.

Decision

- (i) Part 3 of the Notice is corrected by deleting "the land" and inserting "building number 1 (as indicated on the attached map)".
- (ii) The appeal on ground (a) succeeds and the deemed planning application is granted subject to the following conditions.
 1. Building 1 (as indicated on the attached map) shall be retained in the same ownership as the farm holding considered in this appeal.
 2. No activity associated with the engineering business in building 1 shall be carried out outside the hours of 0800 - 2000 Monday to Friday and 0800-1700 Saturday or at any time on a Sunday.
 3. Open storage associated with the business in building 1 shall be confined to the area cross-hatched on the attached map.
- (iii) The Enforcement Notice is quashed.

COMMISSIONER MAIRE CAMPBELL

APPENDIX 2
Existing Agricultural Buildings and Site

